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# THE THEORY AND PRACTICE OF TAXATION

BY

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Richard D. Webb

TO  
MY FRIENDS  
CHARLES NORDHOFF  
AND  
GORDON LESTER FORD.





## NOTE.

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OF Mr. Wells's writings on economic subjects nothing remains to be said. They have a position of their own, and have deservedly attracted much attention and high commendation at home and abroad. For many years he had in contemplation a work on taxation, which should contain the record of his own experience in practical contact with State and national tax systems, and of his studies and conclusions drawn from the history of taxation in other countries. Strong in critical ability and enjoying wide opportunities for obtaining material, he sifted the facts and theories with a view to combining the best of both into a volume which might serve as an account of existing tax methods and as an index or guide to a better system. Some of this material he used from time to time in connection with current discussion; but the greater part appears in these pages for the first time. It is unfortunate that he did not live to give the chapters their final form, but the work was practically complete when he laid down the pen. Certain matter was to be added to the historical section, and the criticism of national and State tax problems was to be extended, and new decisions of the

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courts incorporated. The last chapters, in which he developed the law of the diffusion of taxes, were sketched by him, and embody the essence of the conclusion he had reached. Few changes have been made in the text, and for whatever errors have crept in the editor is responsible.

WORTHINGTON CHAUNCEY FORD.

Boston, *November 27, 1899.*

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# THE THEORY AND PRACTICE OF TAXATION.

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## INTRODUCTION.

It is the purpose of the writer, in the chapters which follow, to discuss the principles of taxation from a broader basis and by different methods than have heretofore been attempted, special consideration being given to the experience of the United States.

Such a discussion primarily involves the inquiry, of how far the varied and curious experience of nations leads up through what may be regarded as a process of evolution, to a recognition of the underlying and essential principles of a just and at the same time an efficient system of taxation. And it also necessitates, for the attainment of correct conclusions in the prosecution of such inquiry, that illustrations drawn from the world's great record of experience should take precedence of theory, especially in the way of example and exhibit of the many abuses of the power of taxation which the ignorance of legislators and the cupidity of designing men have inflicted upon nations.

The subject is one of transcendent importance, perhaps more universally important than any other that can invite public attention. Its discussion opens questions of the widest possible range. There can be no civilization without government, and no government without an adequate supply of revenue obtained from the persons and property of the people governed. There can be no health in the body politic without sound finance, and no sound finance without a sound system of taxation. In fact, taxation is to our body politic what blood is to the body physical: if healthy, infusing life and warmth; but if un-

healthy, the agent for producing discontent, decrepitude, and paralysis.

The absence or existence of limitations on the power of a government to make compulsory levies on the property or persons of its people for its use or support, constitutes the dividing line between a despotism and a free government—a fact most pertinent to legal, economic, and societary studies which has attracted little attention.

The methods and scope of what is called taxation regulate more than all other agencies the distribution of wealth, which is really the great question of the future to all nations. Ever since Adam Smith wrote his paramount work on the *Wealth of Nations* the political economists and students of social science have concerned themselves mainly with the production of wealth. That problem has been practically solved. Wealth is now produced with a rapidity that the world has never before supposed possible,\* and the laws governing its production have become well understood by those who have made a special study of the subject. An inevitable result of this condition of affairs has been, that wealth produced under the greater control that man in general has obtained over the forces of Nature has aggregated itself, as it always will, in the hands of those whose faculties especially qualify them to obtain and manage it, and who, in common parlance, have received the name of "*money-getters*." These have become enormously rich, while the masses, whose material condition is also absolutely much better than at any former period of the world's history, are, however, relatively poorer. Improved instruments for transportation have greatly facilitated intercommunication,† and the oppor-

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\* Recent investigations indicate that the absolute effective force available to the American people for the production of wealth is more than three times greater at the present time than it was in 1860. The outflow of British capital for investment in foreign securities and negotiated in London alone, during the eight years next previous to 1890, has been estimated by those best qualified to express an opinion, to have amounted to the large sum of nearly or quite \$700,000,000 per annum. And this estimate does not comprise all the British capital loaned to foreign countries, but only such as was subject to public cognizance.

† The number of people annually transported on the railroads alone in the United States exceeds many times the total population



tunity thus afforded for the observation of extreme contrasts in individual conditions has operated as a very great factor in occasioning discontent among the masses, who, by reason of the never as yet fully tested experiment of universal suffrage, have become, at least theoretically in the United States, the sole arbiters of the policy of their Government and of the selection of the legislators who are to enact laws in conformity with such policy.\*

The problem of the acquisition of wealth having thus been solved, that of the proper distribution of wealth logically and necessarily follows, and the character of the measures which directly or indirectly involve what is called taxation for the attainment of such result, which seem to commend themselves to the people of the United States, is especially worthy of attention. These measures are indicated in part by the adoption of a pension system unlike anything of the kind ever known in history, and which necessitates an annual expenditure of money (raised by taxation) to meet the military expenses of the country—army, navy, and pensions—in excess of that entailed by the immense military establishment of any of the countries of Europe, and the enactment of an income-tax statute whose primary object was not to raise revenue for the support of the Government, but an unmistakably po-

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of the country, the annual number for the New England States being more than sixteen times greater than their population. The widening of the sphere of one's surroundings, and a larger acquaintance with other men and pursuits, have long been recognised as not productive of content. Writing to his nephew more than one hundred years ago, Thomas Jefferson thus concisely expressed the results of his own observation: "Travelling," he says, "makes men wiser, but less happy. When men of sober age travel they gather knowledge, but they are, after all, subject to recollections mixed with regret; their affections are weakened by being extended over more objects, and they learn new habits which can not be gratified when they return home."

\* "The great, the unanswerable argument in favour of universal suffrage is, not that it insures a better or purer government, but that all must be contented with a government in which all have an equal voice. If it be deficient in this particular, if it fail to protect the poor against the oppression of the rich, or the rich against a destruction of their property by the poor, it is *pro tanto* a failure, and another method of representation should be adopted."—*Address of Justice Brown, United States Supreme Court, before the Law Department of Yale University, July, 1895.*

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litical and socialistic measure, which threatened to annul the most important and exceptional feature of the Federal Constitution.

That the diminishing rate of returns, in way of interest or profits, by the force of laws which no combination of capital can resist, is seriously impairing the relative value of wealth, and may eventually reach a minimum which will greatly diminish the inducement to individuals to economize or save it, although not generally recognised or appreciated, can not be denied.\* And neither is it recognised that the current rate of taxation on capital in all civilized countries even now approximates, and to an extent actually exceeds, the current rates of interest or profit on its use. Thus, for example, the rate of discount at the Bank of England during the greater portion of the years 1894 and 1895 has not been in excess of two per cent, and the discount (borrowing) rate for three months during this period was not infrequently less than a rate of three quarters per cent per annum. If taxes, according to popular theory, do not diffuse themselves, but remain a burden on the person, business, and property subject to their first incidence, there is a problem likely to come at no distant day before tax legislators, which up to the present time they have hardly thought of, and which is certain under a free government to be solved by human nature rather than by statute.†

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\* The French economist, Paul Leroy-Beaulieu, treats fully of this subject in his *Essai sur la Répartition des Richesses*.

† M. Léon Say, the distinguished French economist, in a recent discussion of the income tax, asserts that the public and private financial history of France has been one of incessant abolition of private and state debts, and in substantiation of such a conclusion he shows that if a capital of 8,330 francs had been invested in national debt obligations of France in 1522 and allowed to remain subject to the various changes in respect to capital and interest which the financial policy of the state has necessitated and required under its successive governments, the present value of the investment to the legitimate heirs of the first investor would be but 83 francs.

The reduction of annual income to the holders of the national debts of Europe, contingent on the refunding of the same during the year 1894, is estimated at \$24,000,000, requiring an addition of \$960,000,000, with an earning capacity of two and a half per cent per annum, to the total of what is called capital, to make up for the subtraction of income from the individual holders of

The scope and methods of raising revenue for the support of a State are also some of the greatest, if not the very greatest, determining factors of the morality of a people. "I insist," said an eminent lawyer and member of the Constitutional Convention of the State of New York in 1868, "that a people can not prosper whose officers work and tell lies. There is not an assessment roll now made out in this State that does not both tell and work lies." And no member of the convention, or any representative of the press, either then or subsequently, has challenged the assertion. The extent also to which the existing system of taxation in the United States has obliterated the sense of honesty in its people in their individual dealings with the Government, removed all repugnance to the act of perjury, and caused each one to justify himself to his conscience for making a false return in the matter of taxes, by the supposition that every one is doing the same, is also strikingly illustrated by the circumstance, that a high court in one of the States of the Federal Union has recently decided that "perjury in connection with a man's tax lists does not affect his general credibility under oath."

The idea that the proper relation of a State to its people is essentially of a paternal nature finds much of popular approval, and is without doubt popularly desired. Accepting this idea as correct, let us exemplify it in its application to the State. Suppose a father in dealing with his family, placed, so far as his children are concerned, a premium on lying and concealment, and vested with a heavy penalty all truthfulness and straightforward dealing, he would be regarded as a worthy inmate for the States prison. But this is exactly what the Government of the United States does, or proposed to do, in the case of many of its so-called tax statutes. Thus in the recent income-tax statute it offered to its citizens considerations in money if they would forswear themselves, or practise

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such securities in the previous year. In the United States the shrinkage in the amount of annual dividends paid on the capital stock of its railroads between the years 1892 and 1894 is reported as in excess of \$14,000,000, and in the annual interest on bonds during the same period at \$13,000,000, or a total greater than the losses contingent on the whole refunding operations of the states of Europe during 1894.

deception; and it imposed a direct and heavy fine on those who were conscientious and truthful.\* Again, when the Government imposes a tax of more than a thousand per cent in excess of the prime cost of the article taxed, as it did in 1864 in the case of distilled spirits (whisky), it offered a premium for the perpetration of fraud that human nature as ordinarily constituted could not resist. Could any course of action, if deliberately intended, be more demoralizing to a people? Do not these experiences go far in support of the theory that if a people desire to have a paternal government it would be wise to choose a despotic form, inasmuch as all experience has shown that a republican or popular form of government is least fitted for such work? Give democracy a firm hold of the reins of government, and it is no easy matter, as the French Revolution of 1789 and the present fiscal condition of France exemplify, to restrain its excesses.

It should not furthermore be overlooked that that class of the community to whom the questions of morality and religion are especially intrusted, rarely, if ever, give this subject of taxation any attention. If any sermon has ever been preached in this country by any clergyman of any denomination on the moral and religious results of a defective system of taxation, the writer has never heard of it. One reason and apology for such conduct may be found in the circumstance that intelligent and reliable expositions of this subject are not readily accessible. Indifference or antagonism to the study of taxation is not, however, confined to the clergy. Minds trained in the law are not necessarily, and indeed rarely, trained thereby to

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\* "The obvious method of requiring an oath as to the accuracy of the return, coupled with the severe penalties attached to all perjury, have been found by experience to be of very doubtful expediency. The history of taxation in the United States has long since established the fact, on documentary evidence, that in that country this requirement has made perjury habitual in tax assessments. . . . The danger of using the oath in connection with self-assessment of taxes lies in this fact, that, besides its evil effects on morals, it still further increases the inequality of assessments; one part of the taxpayers will have their conscience aroused by the oath, while others do not, so that the inequality to be expected under any system of self-assessment will simply be augmented."—*Cohn, Science of Finance*, p. 618.

esteem or intelligently discuss economic subjects. One of the most eminent members of the American bar recently remarked to the writer that, grant whatever measures of importance we may to economic principles and interests, they have no place in the legal profession, the business of which was, not to make or amend laws as expressed in enactments, but to interpret and determine their application. Hence the popularity at the American bar of the legal maxim *stare decisis*, which may be interpreted to mean, follow precedents, and do not attempt to invalidate the reasons and conclusions of the lawmakers. Such a theory and rule of practice would, however, close the door on reason and truth, and constitute an almost insuperable barrier to all social progress. If Lord Mansfield, when the negro slave Somerset came before him with a demand that he be given his freedom, had followed precedents, he would have denied the application, for such precedents were opposed to it. But recognising the change which an advanced civilization had effected in the government of the English people, and that the slave was held, to quote his language, "in virtue of positive law" (precedent), "which preserves its force long after the reasons and occasions from whence it was created are erased from memory," he granted the application; and incorporated into the policy of the English Government the principle of which the British people have ever since been proud—that no person can continue to be a slave after he has planted his foot on English soil.

Other obstacles, at present almost insuperable, in the way of establishing a correct system of taxation, are that the subject has not been until recently properly taught, if taught at all, in the higher institutions of learning of the United States and Great Britain; that up to the present time there is rarely if ever given a correct and scientific definition of the terms "tax" and "taxation," which makes it somewhat doubtful if those who talk about their meaning and incidents know what they are talking about; that there are no text-books on the subject generally accepted as authoritative; that there is no clear and settled understanding even as to what constitutes the main subject of taxation—namely, property; that the meaning of terms which have formed the basis of statutes and legal

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practice is entirely different in the United States and other leading civilized nations; and that, as a rule, professors of economic science in the United States have failed to recognise in their reasoning and teachings of this whole subject, that the Government of the United States, both Federal and State, differs in many respects, both in theory and practice, from any other government that has heretofore existed; and that therefore ideas and experiences which are regarded as the basis of sound policy in respect to taxation in the former are not accepted as such in the latter. Thus the United States, alone of the great nations of the world, regards debts and credits as property rightfully subject to taxation. The United States is also the only nation in which the taxation of exports is forbidden both to Federal and State governments under any circumstances. To no other government, furthermore, than that of the United States is applicable the following principle enunciated by the United States Supreme Court (116 United States Reports, p. 631) respecting the assessment and collection of taxes: "Any compulsory discovery, by extorting the party's oath, or compelling the production of his private books and papers to convict him of a crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it can not abide the pure atmosphere of political liberty and personal freedom." If this principle was recognised as the higher law in European states, it would be safe to say that the revenue collected from their income taxes would be exceedingly small.

It is also a very curious circumstance that an existing system of municipal or local taxation, which has proved itself to be most intelligent, satisfactory, and efficient for revenue, and most worthy of being studied as a model for adoption, has as yet almost entirely failed of recognition or consideration by any of the recent writers on taxation or authorities on general economic subjects on either side of the Atlantic.

Again, ignorance or wilful disregard of the true principles of taxation in the United States has powerfully contributed to foster the idea among its people that they should look to Government for their support, rather than



that the people should support the Government. The practical incorporation of this idea into the fiscal policy of the Government has enabled a comparatively few persons to accumulate vast fortunes, has built up class distinctions, promoted popular discontent, and established a precedent for state socialism. Figs, however, can no more be gathered from thistles than class legislation, whether it be the rich against the poor or the poor against the rich, can be looked to for the perpetuation of popular government or the spread of democratic virtues. The evil of bad taxation is not merely economic, it is moral, and no argument can change its character.

To defective elementary education, in respect to the principles of taxation, may also be attributed the almost universal disassociation in the minds of the masses between the payment of taxes and the benefit, or profitable return consequent upon such payment. The youth of the United States, and doubtless of all other countries, as he grows up, finds roads and bridges, schools, courts and churches, commercial regulation and police—in short, all national, State, or municipal machinery—provided for him almost as freely as air, sunshine, or water. He has but to live to experience their benefits or discomforts. At home these subjects, regarded as dry and abstruse, are rarely if ever selected as topics for social conversation, and, if casually brought up, are discussed merely in reference to their bearing upon the interests of this or that political party. The sons, therefore, of even refined and intelligent American families, so far as home education and influences are concerned, enter upon their duties as citizens, with votes and voices for determining the policy of their government, with not merely an entire ignorance of the principles or methods by which the cost of the benefits accruing from such policy are defrayed, but with a disinclination to receive instruction on the subject. Each one, indeed, seems to argue to himself that “as government and society went on very well without thought or care of mine during the first twenty years of my life, they will undoubtedly so continue during my manhood.” And if they eventually become public functionaries, their tendencies, conjoined with not having inherited or acquired the value-perceiving faculty, are toward extravagance and

waste in governmental matters. What would have been saved to the people of the United States since the beginning of the civil war through wise methods of taxation is almost beyond conception. The loss to the Federal Government during the single year 1864, when revenue was most needed on account of the war, through a needless imperfection of the law imposing taxes on the single item of distilled spirits, was proved to have been in excess of fifty million dollars.

In short, it is a most singular idiosyncrasy of the American people, and perhaps the people of all other countries, that they will defer or neglect the study of the most vital question which can concern a citizen. Probably not more than one citizen out of a hundred, even among those who pay taxes, can be induced, as a rule, either to talk about, think about, or study how much national Government costs him per annum, or how much his State or local government costs. And as long as this is the situation, and until the American citizen does become a student of taxation, it is difficult to see how the national and State governments can be wisely and justly managed.

Of the utter lack of comprehension of the results of what may be termed everyday experiences of taxation, coupled with a general indifference to the subject, which often characterizes American legislators, even such as are popularly regarded and spoken of as statesmen, the following incidents will abundantly illustrate: Pending a recent presidential election, a distinguished member of the Senate of the United States, and also of the American bar, assured a popular audience that the people of the single State of Illinois paid a larger amount in taxes to the Federal Government than were paid by all the people of the former Confederate States. Such a statement was obviously made on the assumption that because the State of Illinois annually manufactured a very large amount of distilled spirits, the burden of a very heavy tax on the same rested upon its people; when a very little thought would have shown that the manufacturers of the spirits incorporated the tax in the market price of their product, and that the payment of the same fell entirely upon the people who consumed them, who were not in the main the people of Illinois. If this was not the case, the manu-

facturers of Illinois paid and assumed a tax obligation of ninety cents a gallon for the privilege of making whisky costing and worth an average of but thirteen cents per gallon. The average annual consumption by the people of Illinois at the time, supposing that they actually paid the tax on their product of whisky, must have also been at the rate of over six gallons per head for every man, woman, and child of its population.

When "an act to reduce taxation, to provide revenue for the Government, and for other purposes"—passed August 28, 1894—was under consideration by the Senate of the United States; and pending a proposition to increase the revenue by increasing an existing tax of about seven hundred per cent on the average prime cost of distilled spirits to a rate of nearly nine hundred per cent, a Senator of long experience, apparently utterly oblivious that the subject involved had years before been thoroughly considered by the United States Treasury Department and declared to be impracticable, submitted a motion, permitting the use of alcohol in the arts, or in any medicinal or other like compound, without the payment of any internal revenue tax. The motion in question, after very brief consideration, was accepted and incorporated in the statute and now forms a part of the fiscal obligations and laws of the United States. The result was that the Secretary of the Treasury reported, that in default of any appropriation to defray the expenses of the administration of the act and the repayment of taxes, and "after full consideration of the subject, and an unsuccessful attempt to frame regulations which would protect the Government and the manufacturers, the department was constrained to abandon the effort." It was also estimated that the expense to the Government of attempting to administer the act would probably be not less than one million dollars per annum; that the legitimate loss of revenue contingent on its enforcement would be about ten million dollars yearly, or "more than one half of the estimated increase of revenue" that was expected to accrue from the increase of the tax, and that the loss of revenue from the opportunity for illicit and fraudulent practice, which the act would facilitate, would be unquestionably very considerable—probably an equal amount. The inference from all of

which is, that when a State sends a representative to the United States Senate who, through indifference or gross ignorance of the most common principles and domestic experiences of taxation prospectively, entails a loss to the Government of some twenty million dollars per annum, it pays a very great price for such a privilege.

During another comparatively recent fiscal debate in the United States Senate, a Senator, who is popularly and justly accredited with statesmanship, advocated certain proposed appropriations of the public money, which were opposed on the ground that they were in the nature of extravagances, by saying that they could not be grievous to the people "since they would not amount to more than *three* cents per day per capita." But three cents per day assessed on sixty-five millions of people would amount to nearly eleven dollars per head per annum, or over seven hundred million dollars for the entire country.

Finally, there has been one most serious and unfortunate mistake, which nearly all who have undertaken to discuss the principles and practice of taxation have been prone to make—a mistake, moreover, which more than all else is responsible for the opinion which has come so generally to prevail, that the subject of taxation, through lack of any fixed principles or axioms, does not as yet rise to the dignity of a science; and that its practice at the best can be but a sort of empiricism, to be varied in proportion to the strength which a government possesses to enforce its enactments, or in proportion to the prejudices of the people who are to be called on for a contribution. The mistake consists in taking up the subject for investigation and discussion, if we may so express it, wrong end foremost; or in devoting time and effort to warring against abuses; or in attempting to show how certain forms of taxation commend themselves in respect to productiveness, freedom from personal inquisition, and economy in collection, and how others are to be avoided for contrary reasons; and in not attempting to inquire whether the whole subject was underlaid by any general laws in accordance with which the contributions which the State is compelled as a condition of its existence to exact of its citizens diffuse themselves; and which laws, being once determined, will constitute a certain and sure founda-

tion on which practical administration can be based and conducted.

The fact that such laws exist and only await discovery may be predicated, as it were, from surface indications, in the form of a great variety of disconnected economic facts, with just as much of certainty as the miner who, picking up here and there in the beds of streams fragments of coal or ore which the elements have scattered, predicates that somewhere there must be a larger vein or deposit from which the fragments have been derived.

The aggregates of the sums required by the governments of the world for their support are annually increasing, but probably in no greater ratio than the increase in their wealth, or property rightfully subject to taxation; and in those states in which there is a marked and continued increase in the control of the forces of Nature for production, the ratio of taxation to aggregate wealth undoubtedly tends to diminish.

That there are, however, some striking illustrations that seem to prove to the contrary, is not to be denied. Thus, we have a recent statement that the expenses of the city of Philadelphia in eight years have increased two hundred and thirty per cent, while the taxable valuation of property in the same time has increased only twenty-five per cent. In 1862 the aggregate taxation of the city of Providence, R. I., was \$379,000. In 1892 it was \$2,333,000. In the former year the taxable real and personal estate was valued at \$61,000,000, while for the year 1892 the valuation was \$155,000,000. Thus the increase in the amount of taxes collected within the thirty years was five hundred and fifteen per cent, while in the amount of assessable property the gain was only one hundred and fifty-four per cent. The rate of tax increased during the same period from \$6.50 to \$15 per \$1,000.

Among the leading nations of the world the comparative burden of exactions by Government is heaviest in Russia, Italy, and France. In Russia the present governmental exactions—under the name of taxes—from the agricultural peasant are reported to be about forty-five per cent of the value of his annual product or earnings. In Italy the state exaction is believed to absorb from one third to one half of the value of its agricultural product.

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The present aggregate of annual taxation in France is undoubtedly the greatest to which any country in modern times has been subjected; and including all taxes—national and local—is estimated as in excess of \$1,400,000,000, or about one fourth of the annual income of its people. And yet it is claimed that the prosperity of the nation is increasing. There can, however, be no doubt that the financial strain caused by such great and continuous demands on the income of the French people is beginning to be severely felt; and in a recent budget discussion in the Senate of the republic, M. Loubet, chairman of its financial committee, insisted that taxation had reached its utmost endurable limit.\*

As far back as 1879 the taxation imposed by Spain on her island of Cuba was reported to have made the latter the most heavily taxed country in the world; the rate on its free population being then estimated as equal to \$34.50 per capita.

The cost of the Government of Great Britain for 1893-'94 defrayed by what are termed imperial taxes—mainly customs and inland revenue, and deducting all items of compensating revenue, as receipts from crown lands, etc.—was £75,427,000. The total expenditures of the local authorities of the kingdom for 1893, defrayed from rates on the annual value of houses, or lands occupied, from gas and water rents, tolls, dues, loans, etc., and less the grant of subsidies from the Imperial Government,

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\* In a recent article in the *Economiste Français*, M. Leroy-Beaulieu presents some facts which enable foreigners to form an opinion of the financial management of France under its present democratic form of government. There is at present, according to this well-recognised authority, an actual annual deficit of between three and four hundred million francs. The floating debt, "official or concealed," has taken enormous proportions, and is met by a variety of expedients, and mostly by secret loans (which are always costly), because the Government does not dare contract a large public loan, the only regular and least expensive means of extrication from financial embarrassments. Expenses are piling up and nobody takes any thought of repressing them. In short, according to M. Leroy-Beaulieu, there is under the present Government, notwithstanding "constant and vain buzzing on the subject of democratic reforms, the adhesion of a mollusc to the wretchedest routine and a downright hatred of every kind of improvement."



was about £56,000,000, making an aggregate of £131,400,000—or \$657,000,000.

For the year 1890 the aggregate receipts of the Federal and State governments of the United States, mainly from taxes, as reported by the census for that year, were \$1,040,473,013, apportioned as follows: Federal taxation, \$461,154,000; State or local taxation, \$578,328,000. Deducting the cost of postal service repaid by postal charges, and the receipts from the sale of public lands, the aggregate expenditures of the Federal Government would have been about \$390,000,000.

Of these large sums it is safe to say, more especially of the latter national summary, that a very small proportion, not even as much as a single dollar, has been raised under a statute framed and enacted solely from recognition of and conformity with any correct economic principles; and that in most, if not all, tax legislation, ideas not warranted by thought and experience, and based on expediency or political considerations, have always predominated. Illustrations of the truth of this assertion are abundant, but for the present one most pertinent, drawn from recent experience, must suffice. In August, 1891, the Farmers' Alliance of the State of Maryland held a convention in Baltimore for the purpose of advocating a complete revision of the tax laws of their State, the imperfection, injustice, and practical futility of which were not questioned; and after general debate the following resolutions were unanimously adopted, not one of which is economically true; not one of which in the light of experience can be successfully enforced by other than a despotic government; and every one of which, if enforced, would prove prejudicial to the interests of the community which sanctions and enacts them:

*Resolved*, that the burden of all taxation ought to be imposed equally and impartially on all property, of whatsoever kind, both personal and real, without distinction and discrimination; that every exemption from taxation is equivalent to direct appropriation for the benefit of the owner of exempt property, and an increased levy on the property of those who pay taxes; that no tax law which provides for the exemption of any property of any kind can be either expedient or just; that no law, no contract,

no device which by any means directly or indirectly imposes the payment of any part of any tax upon any man not the *bona fide* owner of that property ought to be tolerated; that debts secured by mortgages at legal interest are among the best and most productive forms of property, and should be taxed where the mortgages are recorded." \*

A recent English writer has claimed that the experience in reference to taxation of the forty-five anomalous sovereignties which now make up the United States (none subordinate to a national Government except to a limited extent and in respect to particular questions), has thrown a great light upon the temper of democracies. "Half a century ago every thinker predicted that the one grand evil of democracy would be meanness; that it would display an 'ignorant impatience of taxation,' and that it would refuse supplies necessary to the dignity, or at least to the visible greatness, of the state." That prediction has, however, proved itself, not only by the experience of the United States, but also of the leading countries in Europe, to be the exact contrary of the facts. "The lower the suffrage, the higher the budget mounts. Democracy loves spending, is devoted to dignity, and, provided they are indirect, or fall heaviest on the rich, will pay any amount of taxes. The English democracy with household suffrage, though it has reduced its debt, has increased its budget, increased rates all over the country, and would not be frightened to-morrow if a great socialistic experiment were to cost it a hundred millions. It hardly shudders when it is asked to support in comfort, at a cost of about £17,000,000 (\$85,000,000), its whole aged poor. The French democracy has nearly doubled its taxation and raised its debt more than a third, apart from the tribute paid to Germany. The German democracy, with enlarged suffrage, a poor soil, and nearly universal poverty, is always granting new demands, whether for soldiers, ships, colonies, or centralized officials."

But it is in the United States, with universal suffrage and the richest of estates, that the extravagance of government expenditures, sustained by taxation, rises to a point

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\* In the following chapters the absurdity of the above resolutions will be specifically demonstrated.

which fiscal experts, like Alexander Hamilton, Robert J. Walker, and Albert Gallatin in the United States, and William Pitt, Sir Robert Peel or Ricardo in England, could not have been persuaded to believe possible. Either of them would have declared an American pension list arising out of war only and not covering any allowances to civil servants, amounting to \$155,000,000 (£31,000,000) a year, too absurd for credence, and would have criticised the prophet who made the prediction for his poverty of invention.

That the interests benefited by national extravagance will, under free suffrage, always constitute a formidable obstacle to judicious tax reform, especially if such reform contemplates national economizing, can not well be doubted; and also that this opposition will be re-enforced to some extent by a popular feeling that something of colour and dignity will go out of national life by any marked curtailment of the expenditures of the State. On the other hand, the political supremacy of the United States confessedly yet resides in its agricultural classes, who more than any other are characterized by a spirit of thrift and a desire for equitable and low taxes.

Such, then, is the situation which confronts any one who proposes to discuss broadly the great subject of taxation with a view of effecting reforms in the existing system. It exacts, on the part of him that is to attempt it with any prospect of success, a familiarity with theory, not merely gained from the study of books, but theory based on extensive practical administration. It requires, on the part of both the teacher and the taught, what Herbert Spencer has declared to be the conditions of success in all departments of scientific research, namely, "an honest receptivity and willingness to abandon all preconceived notions, however cherished, if they be found to contradict the truth."

## CHAPTER I.

### RECENT TAX EXPERIENCES OF THE FEDERAL GOVERNMENT OF THE UNITED STATES.

BEFORE passing to the detailed consideration under proper and consecutive subdivisions of the subject of taxation, the writer thinks it expedient to outline briefly the exceptional circumstances under which his studies and investigations have been prosecuted; inasmuch as, apart from any expectation of consequent intelligent criticism on his conclusions, a somewhat personal narration may help to a better popular understanding of a great chapter in the nation's fiscal experience, which, although without a parallel in all history, has thus far received scant notice and little appreciation on the part of economic writers and historians.

His first connection with economic and fiscal questions of public import was through the publication, at the darkest financial period of the war—1864—of the results of an inquiry into the resources and prospective debt-paying ability of the United States, and bearing the title of *Our Burden and Our Strength*. This essay, although first printed privately, was reprinted and circulated by the Loyal Publication Society of New York, and, receiving the approbation of the Government, became one of the current publications of the war period. Reprinted in different sections of the country by loyal citizens, and also in repeated instances in England, translated into French and German, it attained a very large circulation; in excess of two hundred thousand copies. Coming at a period when the nation was beginning to be alarmed at the magnitude and prospective increase of its public debt, and apprehensive of an impending crushing burden of taxation, its publication and circulation were instrumental in

restoring public confidence and maintaining the credit of the Government.

The attention of President Lincoln having been attracted to this publication, he invited the author in early February, 1865, to come to Washington and confer with him and Mr. Fessenden, then Secretary of the Treasury, on the best methods of dealing, after the termination of the war (then evidently near at hand), with the enormous debt and burden of taxation that the war had entailed upon the nation.\* The result of this conference was, that an amendment was added, at the last hours of the Thirty-eighth Congress, to a bill "To provide Internal Revenue," and passed March 3, 1865, authorizing the Secretary of the Treasury "to appoint a commission of three persons to inquire and report at the earliest practical moment on the subject of raising by taxation such revenue as may be necessary to supply the wants of the Government, having regard to and including the sources from which such revenue should be drawn, and the best and most effectual mode of raising the same." The commission was further empowered "to inquire into the present and best methods of collecting the revenue," and to take testimony. Of this commission the writer was, unexpectedly to himself, appointed chairman by the then Secretary of the Treasury—Hon. Hugh McCulloch—after the assassination of the President, but in accordance with his previously indicated wishes.† It was also deemed expedient that, of the other

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\* Mr. Lincoln opened the conference by remarking that, although the war was evidently drawing to a close, he feared that great difficulties were yet to be encountered through the possible unwillingness or inability of the nation to pay the war debt, or the great increase in taxation which the war had made necessary; and followed this remark by asking if the writer had anything to suggest on the subject. The offhand answer returned was, that the best thing to be done was to have an examination made by competent persons of the resources of the country and the best methods of making them available for meeting the expenses of the Government through taxation. Turning to the Secretary of the Treasury, Mr. Lincoln remarked: "That's a pretty good idea, Fessenden, isn't it? We'll think about it"; and as the hour (evening) was becoming late, the conference substantially soon ended.

† The appointment was unsolicited and unexpected, and Mr. Fessenden some years afterward stated that when the composition of the commission was under consideration Mr. Lincoln remarked

members, one should be a representative of the agricultural interests of the West, and a third a citizen of Pennsylvania, the chairman being at the time a citizen of New York; and in accordance with this view Mr. Samuel S. Hayes, who had distinguished himself as Comptroller of Chicago, and Mr. Stephen Colwell, of Philadelphia, a gentleman of advanced age, and a successful manufacturer of iron, who had written some years before the war an able book entitled *Ways and Means of Payment, a Full Analysis of the Credit System*, were selected. A word of retrospection is here essential to an understanding of the situation.

If it be an axiom in political and social as well as physical and natural science, that the first requisite for progress consists in the correct observation and recording of phenomena, whereby old laws or principles may be verified or extended and new ones discovered, it would be difficult to imagine a field more fruitful for investigation and more promising of reward than the financial and industrial experiences of the United States immediately anterior and subsequent to the outbreak of the civil war—experiences which had truly the character of vast social and political experiments, made on a scale of magnitude rarely if ever before equalled; for the most part emphatically tentative in character, and affecting in their results not only the growth, the income, and the industrial pursuits of the nation directly and immediately concerned, but also in a greater or less degree the trade and commerce of the whole world.

At the breaking out of the civil war in 1861, the United States was in the anomalous position of a great nation practically unencumbered with a national or public debt. Excise, stamp, income, license, and direct or general property taxes under the Federal Government were *absolutely* unknown; the expenses of a simple and economical administration being defrayed almost entirely by indirect taxes, levied in the form of a tariff on the importation of foreign products or merchandise. In fact, the only other noticeable source of national revenue was from the

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that "he thought we had better let the young man who had suggested the idea of it be at the head of it,"

sale of public lands, which, at a maximum price fixed by law of one dollar and a quarter per acre, returned to the Treasury an average income of from one to three million dollars per annum; rising in a few instances, during periods of wild speculation, to six, fourteen, and in one exceptional year (1836) to even twenty-four million dollars.

The average rate of duties imposed on the aggregate value of foreign importations during the thirty years immediately preceding 1860 was about twenty per cent; but for a portion of the time the annual rate was much less, and for a number of years—1834 to 1843 and 1858 to 1861 inclusive—it was not in excess of fifteen per cent. An occasional need of money by the Government was met by loans on Treasury notes or short-term bonds.

But notwithstanding these limitations on the sources and amount of income, the requirements of the national Government for all purposes were so moderate that the receipts of its Treasury continually tended to exceed its disbursements; and the difficulty which most frequently presented itself to its financial administrators was not the customary one in all other countries, of how to avoid an annual deficit, but rather how to manage to escape an inconvenient but inevitable surplus. And it is a curious fact, and one perhaps altogether unprecedented and almost unrecognised in history, that from the years 1837 to 1857 there was rarely a single fiscal year, in which the unexpended balance in the national Treasury—derived from a few sources—at the end of the year, was not in excess of one half of the total expenditure of the preceding year.\*

To provide for the use, or rather to get rid of a continual surplus, various plans were from time to time suggested. In one instance the House of Representatives,

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\* During the decade from 1821 to 1831 the average ordinary annual expenditures of the United States were \$12,390,000, or at the rate of \$1.07 per capita of its whole population.

From 1831 to 1841, \$24,740,000, or \$1.61 per capita.

From 1841 to 1851, \$33,760,000, or \$1.63 per capita.

From 1851 to 1861, \$57,870,000, or \$2.06 per capita.

For the year 1894 the total expenditures of the Federal Government, as officially reported, were \$442,605,758, or \$6.08 per capita of the entire population of the country; or \$4.50 less expenditure for pensions.

on motion of Henry Clay (the leading statesman of his day), seriously considered the question of the expediency of the national Government becoming by purchase and investment a partner in various stock corporations or enterprises; and pending any conclusion the surplus funds were deposited in the local or small State banks, with reiterated injunctions "*to loan liberally to merchants.*"

In 1836, the unexpended cash balance in the Treasury of the United States reported as available for public purposes being \$65,723,959—\$46,001,467 of which was on deposit in ninety-one different State banks—Congress (by act of June 23d of that year) appropriated the sum of \$37,468,859 for distribution among the States; of which \$27,063,430 was officially certified in September, 1837, as having been actually paid. Most of the States applied the amount apportioned to them for educational purposes. Others used it differently and less wisely: Massachusetts, for example, dividing her share proportionally among her towns and cities, where it was expended at the discretion of the local authorities; in one instance, in a small fishing town, for the construction of walks on the sands for the benefit of pedestrians; and in others for the purchase of houses and lands for the use and settlement of the town's poor.\*

As might have been expected under such circumstances, fiscal and economic subjects were, during the period under consideration, those that least of all attracted the attention of the American people. Few books or essays on such topics were either written or read, while the continually increasing agitation and interest respecting the existence or extension of negro slavery furnished the never-ending and predominant theme for discussion alike to the press, the politicians, the pulpit, Congress, and the local Legislatures. There had been, indeed, fierce discussions and political divisions in 1836-'38 respecting the organization and management of banks, and the establishment of a national bank; and in 1840-'41 and 1846, respecting the

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\* See Bourne, *The History of the Surplus Revenue in 1837; being an Account of the Origin, its Distribution among the States, and the Uses to which it was applied.* New York, 1885.



construction and adjustment of the tariff, and the principles of free trade and protection. But during the decade from 1850 to 1860 all these questions were generally regarded as old-time issues, and by the generation that then had control of the business and government of the country were both substantially ignored and forgotten; and it was during the latter years of this period, or from 1851 to 1860, that the comparative growth and progress attained by every department of American trade, commerce, and industry were greater than for any corresponding period either before or since, in the history of the nation: During the same decade the increase in population of the country was returned at 35.59 per cent, its increase in wealth at 126.4 per cent, and the average of property to each individual at \$510. In short, it would be difficult to find a more happy illustration of the influence of the "non-interference" or "non-obstructive" policy of a government with the trade, commerce, and industry of a highly civilized and active people, than the condition of the United States at that time afforded.

That the country, viewed from a politico-economic standpoint, was at this time in all respects what it should or might have been, is not, however, asserted. The institution of slavery, denying to over four millions of human beings the freedom of the person, the right to real property, and the blessings of education, was tolerated and supported by law. The paper and ordinary currency of the country, neglected by the General Government, and issued by local banks under almost as many different systems as there were States in the Union, was as defective as could be well imagined, and often necessitated a rate of exchange between the different sections of the country which was equal to or in excess of the current rates of interest at the principal commercial centres.

But notwithstanding these drawbacks the people in general were highly prosperous. Pauperism, apart from the large cities, was almost unknown; wealth was very equitably distributed; while the opportunities for elementary education were free, and in all the more densely populated portions of the country amply provided. In short, the prosperity of the people was so great, through the utilization of their natural resources, their activity,

and the continued influx of the population and capital of other countries, that it constituted in itself an obstacle to reform; and the nation at large may be said to have actually preferred to endure the various economic and social evils incident to their situation rather than devote time to their consideration and meet the grave political issues consequent upon any change or reformation. What would have happened, what would have been the economic and social condition of the United States, had not the people of its southern section appealed to the arbitrament of the sword in the matter of slavery and consented to its peaceful abolition,\* constitutes a most curious and interesting theme for speculation. Certainly it would have been something without precedent in the world's former experience.

It was with such antecedents and under such conditions that the nation found itself in the early months of 1861 suddenly and unexpectedly involved in a gigantic civil war, in which its very existence was threatened by the uprising of at least a third of its population against the legitimate and regularly constituted Government. The most urgent and important requirement of the Federal Government at the outset was revenue. Men in excess of any immediate necessity volunteered for service in the army, but to equip and supply even such as were needed precipitated an avalanche of expenditure upon the Treasury. To meet these financial requirements there was on the part of the Government neither money, credit, nor any adequate system of raising revenue by taxation; the previous reliable supply of revenue from the customs having at the most critical period, through the diminution of imports consequent upon the political disturbances, become subject to a serious and ominous impairment; while the money returns from all sources, other than loans, for the year 1862 were only \$2,867,057. For this latter year the total ordinary receipts of revenue of the Government were but \$51,919,000, and its expenditures \$456,379,000.

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\* Subsequent events have made it clear that with the continuance of slavery the development of the nation must have been greatly retarded.

At the outset it was assumed that the war would be short, and that the expenditures of the Government could be met by the agency of loans and an issue of paper money, the detailed history of which, although not yet familiar to the American public, is not directly pertinent to the subject under consideration, and would require a separate essay for its presentation in any degree of fulness. All direct or internal taxation was accordingly for a time avoided; there having been apparently an apprehension on the part of Congress that inasmuch as the people had never been accustomed to it, and as all machinery for assessment and collection was wholly wanting, its adoption would create popular discontent, and thereby interfere with a vigorous prosecution of hostilities. Congress accordingly confined itself at first to the enactment of measures looking to an increase of revenue from the increase of *indirect* taxes upon imports, and it was not until four months after the actual outbreak of hostilities that a *direct* tax of twenty million dollars was apportioned among the States, and an income tax of three per cent on all incomes in excess of eight hundred dollars was authorized, the first being made to take effect practically *eight* and the second *ten* months after date of enactment. Such laws, of course, became operative in the loyal States only, and produced but comparatively little revenue; and although the sphere of taxation was soon extended, the aggregate receipts from all sources by the Government for the third year of the war—from excise, income, stamps, and all other internal and direct taxes—was less than forty million dollars, and that, too, at a time when the expenditures were in excess of sixty million dollars per month, or at the rate of more than seven hundred million dollars per annum. And as showing how novel was this whole system of direct and internal taxation to the people, and how completely the Government officials were lacking in all experience in respect to it, the following incident may be cited: The Secretary of the Treasury, Mr. Chase, in his report for 1863 stated that with a view of determining his resources he had employed a very competent person, with the aid of practical men, to estimate the probable amount of revenue to be derived from each department of internal taxation for the current year. The estimate arrived at was \$85,-

456,303, but the actual receipts were less than forty million—\$37,640,788.\*

The people of the loyal States were, however, more determined and earnest in respect to this matter of taxation and revenue than were their rulers, and everywhere the one opinion expressed was, that taxation in all its forms should immediately, and to the largest extent, be made effective and imperative. And Congress, spurred up by and rightfully relying on public sentiment to sustain its action, at last resolutely took up the matter, and devised, or rather drifted into, a system of internal taxation which for its universality and peculiarities has no parallel in anything which had theretofore been recorded in civil history, or is likely to be hereafter.

The great necessity of the situation was revenue, and to obtain it speedily and in large amounts through taxation was the only principle recognised (if it can be called a principle), and was akin to that recommended to the traditionary Irishman on his first visit to Donnybrook Fair: "Wherever you see a head, hit it!" Wherever you find an article, a product, a trade, a profession, a sale, or a source of income, tax it! And so an edict went forth to this effect, and the people cheerfully submitted. Incomes under five thousand dollars were taxed five per cent, with an exemption of five hundred dollars and house rent actually paid. Incomes in excess of five thousand dollars and not in excess of ten thousand dollars were taxed two and a half per cent in addition, and incomes over ten thousand dollars, five per cent additional, without any allowance or exemptions whatever. Nearly every industrial product was taxed. Cotton was taxed at the rate of two cents per pound; salt, six cents per hundred pounds; tobacco, from fifteen to thirty-five cents per pound; cigars, from three to forty dollars per thousand; sugar, from two to three cents and a half per pound. Distilled spirits were taxed progressively: first at twenty cents, and finally at two dollars per proof gallon.

But the most curious and complex taxes were those imposed on the various products of what may be termed ordinary manufacturing industry—a tax, by intent or con-

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\* Finance Report, 1863, p. 3.

struction, being first imposed on the raw material, and then on the total or increased value, according to circumstances, of each successive stage of its elaboration up to the finished product. And, as if this was not enough, every manufacturer was compelled to take out an annual license, while the goods produced, if sold by dealers or agents independent of the manufacturers, were subject to an additional tax of one tenth of one per cent, reckoned upon the amount of sales. This tax upon manufactures and products, with the exception of a few articles, was at first fixed, in 1864, at an average of *five* per cent; but in 1865 the rate was increased *twenty* per cent, making the tax for most articles *six* per cent.

Under the operation of this system the Government actually levied and collected on many articles of finished industrial products a tax of six per cent, the effect of which may be thus illustrated: Many manufacturing establishments sold products annually to three times the amount of their invested capital. If the capital invested was one hundred thousand dollars and the sales three hundred thousand, the tax on that business was eighteen thousand dollars, or eighteen per cent on the cost of the establishment.

The sales of its products by a manufacturing establishment are, however, no indication of its profits. It may make and sell to the amount of a million dollars without making a dollar of profit, but that, under the law, was no reason for the non-assessment and non-collection of a tax of sixty thousand dollars on the value of the product represented by its sales.

Again, the effect of the tax on every stage of elaboration of a manufactured product may be illustrated by a great variety of actual examples. Thus, in the case of the manufacture of umbrellas and parasols, it was shown that separate taxes were paid, first, on the sticks or supporting rods; then upon the handles, if carved or turned separately, of bone, wood, or ivory; then, in like manner, upon the brass runners, the tips, the ribs, the cloth composing the cover, the elastic band which fastened the cover when closed, the rubber of which the band was composed, the button to which it was attached; and finally upon the umbrella itself, when the separate parts were aggregated,

and thereby converted into a finished product. And if any of the constituents of the umbrella—as the ivory, the silk, or the metal—were of foreign production, the same were subjected on coming into the country to an import duty in addition.

In the case of books and pamphlets, it was proved by the New York Publishers' Association that, including the license and income taxes, the finished book and its constituent materials paid from fifteen to twenty separate and distinct taxes before it came to the reader—the paper and its constituents, the cloth, the glue, the starch, the leather, the slaughtered animal whence the hide furnishing the leather was obtained, the dyes with which the cloth or leather was coloured or stained, the thread, the gold leaf, the type metal, the type, and the printing machinery; and then, when the whole was combined, the finished book paid an additional tax of six per cent, which was levied not upon the cost of manufacture but upon the price at which the book was sold. In addition to all these taxes, the manufacturer or publisher paid for the privilege of doing business an annual license tax, and an income tax of from five to ten per cent on his profits, if he had any.

In short, it was as if a frontier line had been drawn about each individual article or product in the nation, across which nothing could pass without being submitted to an exaction.

Besides these taxes on manufactured products of the character specified, a tax of from three to six per cent was imposed on repairs when the value of the article repaired was increased by reason of the repairs to the extent of ten per cent; and a further tax of six per cent on what was termed "increased values," or the additional value given to any article, which had either paid an import or internal tax, by being "polished, painted, varnished, waxed, gilded, oiled, electrotyped, galvanized, plated, framed, ground, pressed, coloured, dyed, trimmed, or ornamented."

The examples of difficult and nice adjudication experienced in enforcing these two classes of taxes are so curious as to justify somewhat more than a passing notice. Thus, if a worker in tin or iron made a stove at one hour and in the next hour repaired a stove to the extent of more than

ten per cent of its value, he paid on the product of his *first* hour's work a tax of six per cent, and on his *second* three per cent. In like manner, a blacksmith making a taxable article, and then repairing one exactly like it, was liable to the payment of the two classes of taxes; and the theory of the law, furthermore, was that both the tinsmith and the blacksmith kept a separate and distinct account of their different transactions. Again, if a worker in wood repaired a wheelbarrow worth one dollar, and by so doing added ten cents to its value, the increased value was taxable. But if, on the other hand, he repaired a carriage or pianoforte worth five hundred dollars, no tax accrued unless the value of the repairs exceeded ten per cent, or fifty dollars. The following absurd case was presented for adjudication under these statutes:

A wheelwright repaired a carriage to the extent of eight per cent. The owner then passed it successively to a blacksmith, a painter, and an upholsterer, neither of whom added repairs to the extent of ten per cent, or knew the value of previous repairs or the value of the carriage before it was repaired. The question then was, Shall the repairs, however extensive, go untaxed, or shall the owner be taxed? The construction of the law was, that the tax must be assessed on the manufacturer, or persons receiving pay for the work, and that the owner could not be the manufacturer unless he furnished the materials, in whole or in part, for making the repairs; and then the further question arose, whether the subject of repair in the shape of the old carriage furnished by the owner was a material for making the repair, and thus constituted the owner a manufacturer, and as such liable to taxation.

In another case the question came up whether the publishers residing in one assessment district and having their books printed and bound by contract in another, were to be regarded as manufacturers of the books; or whether the printers and binders who executed the work were to be so regarded and taxed. And in two instances, in two contiguous districts in the State of Massachusetts, the law was interpreted in both ways, or in one way in one district and another way in another district; and the parties interested submitted rather than incur the trouble and expense of contesting the matter before the courts.



In fact, it is safe to say that no more complicated and absurd questions have ever seriously occupied the minds of educated men since the discussions of the schoolmen in the eleventh and twelve centuries (as, for example, as to how many angels could stand at once on the point of a fine needle), than were evolved from the tax system of the United States during and for some time after the war period.

We have said that the people of the United States submitted to such a system. They did more. For such was the fervour of patriotism and the determination to push the war to a successful issue, that they rejoiced in it; and during the continuance of hostilities there was no movement or protest against the system which found any notable response among the masses. The country was rich, and its accumulated resources had not for two generations been subjected by either the national or State governments to extraordinary taxation. Wealth, moreover, was very uniformly distributed, and the people pointed with pride to the annually increasing receipts of revenue under the new system; which, starting with \$41,000,000 of internal revenue in 1863, rose rapidly to \$117,000,000 in 1864, \$211,000,000 in 1865, and culminated in 1866 with the large sum of \$310,000,000, making the total revenue for that year, drawn from all sources by so-called taxation, \$559,000,000, the largest sum contributed in any one year for the support of any Government by the free consent of its people.

So long, moreover, as the war lasted, the attempts to evade taxation by illicit methods were exceptional and in amount inconsiderable. The demand for most manufactured and agricultural products, owing to the enormous consumption of the armies and the withdrawal of labour from its accustomed vocations by enlistments, was fully equal to or in excess of supply. Prices rose rapidly with every increasing taxation or additional issues of paper money,\* and under such circumstances the fiscal require-

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\* Among the absurd theories put forth in justification of an extravagant issue of (irredeemable) paper money was a favourite one, that such a policy was a matter of necessity to make money easy, in order that the securities (bonds) representing Government loans should be easily floated; the one uppermost idea in the heads



ments of the war were not regarded by the majority of producers as oppressive. But, on the contrary, counting the taxes as elements of cost and reckoning profit as a percentage of the whole cost, it was generally the case that the aggregate profits of the producer were actually enhanced by reason of the taxes, to an extent considerably greater than they would have been had no taxes whatever been collected. Indeed, it was not infrequently the case that the manufacturers themselves were the most strenuous advocates for continued and rapidly increasing taxation, with a view of realizing thereby, through an advance in prices, large additional profits on products, or constituents of products, previously assessed or imported at lower rates of (customs) duties, and to bring about such advances influence and money were used without scruple. Thus, in the case of distilled spirits, the taxation was advanced in successive years from twenty cents per gallon to sixty cents, next to a dollar and fifty cents, and finally to two dollars per gallon, and in each of these instances, and particularly after the imposition of the first two and lowest rates, the distillers and speculators reckoned, with a great degree of certainty, that a further large advance would be enacted, and that the new law would not be made retroactive or applicable to spirits distilled and assessed previously and at lower rates. In this they were not disappointed, for Congress, under the influences to which it was subjected, did virtually legislate in each instance in the manner expected, and thus gave occasion for the realiza-

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of the Government officials having been, apparently, that in the floating thus contrived the bonds alone would possess the property of buoyancy. But in this they were mistaken. The bonds indeed floated, but everything else floated with them; or, to borrow the language of a writer of the period (who criticised this experience from the humorous point of view), "the bonds were floated, but by just about the same operation as that by which things are floated in the suburbs of a town or city submerged in a heavy freshet—hencoops floated, cellars floated, streets floated, barge houses and outhouses floated, stray children and first floors floated, all creation floated and floated together." The market for fifties was made easy, the market for flour, beef, cotton, and military stores, of which the Government was compelled to purchase immense quantities, was made particularly easy. The whole country was put under water and remained so for a considerable period after the war terminated.

tion of profits in strict conformity with law by the holders of stocks made in anticipation of the several advances, which can not be estimated at a less aggregate than one hundred million dollars. Thus, the evidence before the United States Revenue Commission in 1865-'66 showed that there was on the 1st of January, 1864, a stock of tax-paid distilled spirits, made in anticipation of an increased tax, sufficient to meet all the requirements of the country for a period of six months, and on each gallon of this quantity, a profit or revenue, which did not accrue to the Government, of from sixty cents to a dollar and forty cents per gallon was realized.\* And yet, with this lesson of costly experience before it, the Fifty-third Congress, in advancing the tax on distilled spirits from ninety cents to a dollar and ten cents per gallon, afforded again such facilities to distillers and speculators, for anticipating such advance, as to legislate into their pockets at least ten million dollars.

In the case of cotton, which advanced mainly by reason of conditions affecting its production or distribution, it was shown by actual calculation, in respect to one manufacturing corporation in New England, that if they had at the commencement of the war burned their mills, lost their insurance, and sunk their capital other than was invested in cotton, and had subsequently sold their cotton at the highest price obtainable in place of manufacturing it, the result would have afforded to the stockholders an annuity of at least *twelve* per cent on their original investments.

How much the cost of the war and its expression in the form of debt were unnecessarily increased by this state of affairs, has not until very recently been taken into account by writers on the fiscal history of this period, and probably can not be accurately estimated. But the following data throw great light on the subject: Thus, assuming the general average of prices in the loyal States of the Union before the war, or, more precisely, in 1860, at 100, the average from 1860 to 1865 was 186.71. But for the last year of the war, or in 1865, it was 216.81, and it was during this latter period of greatest increase in prices that the heaviest purchases were made by the Government

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\* This is more fully developed in the next chapter.

on account of munitions and supplies. The increased cost of the war by reason of this increase in the price of commodities, which in turn may be in a great degree attributed to the use of irredeemable paper money invested with legal-tender quality, has been estimated by Mr. Edward Atkinson at over a thousand million dollars, and the interest on this increased cost another equal sum. By so much, furthermore, as these supplies and other necessities of life were increased in price through the depreciation of the currency, those who rendered personal service in the army and navy were deprived of what ought to have been the purchasing power of the payments made to them by the Government for such service.

With the close of the war a marked change speedily occurred, in the nature of discontent, in the temper of the people in respect to taxation. But this discontent at the outset was restricted almost exclusively to the so-called "internal revenue taxes," and extended in little or no degree to the war taxes imposed on imports; which last, so long as the internal revenue taxes continued to be levied upon every manufactured product, and also upon the separate constituents of such product, were not only wholly justifiable, but absolutely necessary, if the fiscal burdens of the war between the domestic producers and their foreign competitors were to be equalized. In some instances, through oversight or neglect, the tariff taxation was made actually less upon the imported article than was the internal taxation on the domestic product manufactured from it; one illustration of which was, that the charges imposed on the import of Manila rope were fifty-six dollars per ton, while the internal taxes on the rope manufactured in the United States from the Manila fibre ranged from forty-eight to seventy-three dollars per ton.

It soon became evident that the country *could* not endure for any great length of time the war system of taxation, and, furthermore, *would* not, when a return of peace had made its continuance unnecessary.\* And, pending

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\* The imperative necessity of a speedy abatement of the internal revenue taxes after the termination of the war finds striking illustration in the following examples of actual experience. Thus the tax of six per cent, levied and collected during the fiscal year 1864-'65, on the value of the products of the woollen industry

its modification for the purpose of reduction, a desire to evade the payment of taxes everywhere manifested itself, until it seemed at one time as if the whole country and the Government itself were becoming corrupted and demoralized. For example, the revenue receipts from the income tax, without any change in the law, declined from \$72,982,000 in 1866 to \$66,014,000 in 1867; and those from a uniform tax on distilled spirits, from about \$29,000,000 in 1867 to a little in excess of \$14,000,000 in 1868.

It was under such circumstances that the Revenue Commission entered upon its prescribed duties. The work of investigation devolved mainly on its chairman, the second member being debarred by age and feeble health from any active exertion; while the third assumed from the outset that the best and most feasible way of meeting the financial difficulties of the situation was to abandon the "whole system" (of existing taxation) "in the shortest time consistent with the general interests of the country," and, by an amendment to the Federal Constitution, authorize and require the Federal Government to levy "a duty, payable in lawful money, of one per centum per annum" on the income of all interest-bearing indebtedness issued by the United States and payable in lawful money; and "a duty, payable in specie, of seven tenths of one per centum on the principal of all indebtedness of the United States, which shall belong to any person or corporation, and the interest on which may be payable in specie." He was also of the opinion that such taxes on the income or principal of the indebtedness of the United States should be "in addition to any ordinary duty or tax equally imposed upon all incomes, or directly upon all personal and real property within the United States subject to taxation." \*

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in Massachusetts alone (\$48,430,671) was equivalent to nearly twenty per cent on the whole capital (\$14,735,671) invested in this business; while the tax on the value of boots and shoes manufactured in the same State during the same year (\$52,915,243) was equal to thirty per cent on the whole capital employed (\$10,067,474).

\* A short memoir of Mr. Colwell was read by Henry C. Carey, in 1871, before the American Philosophical Society. A list of his writings is given at the close, and the suggestions quoted are doubtless in *Financial Suggestions and Remarks*, published in 1867. I have been unable to see a copy of this pamphlet, or to trace any writing of Mr. Hayes embodying the proposition in the text.

A subsequent report to this effect was not received with any marked disfavour by the general public, and had the indorsement of not a few leading American bankers and capitalists. As the average annual rate of interest accruing on the market price of the gold bonds issued by the United States from January, 1862, to January, 1866, was 8.82 per cent, and on investments in the debt of the United States payable in lawful money, from 1863 to 1866, was 10.68 per cent, the proposition to levy a tax of one per cent on the income or principal of the same did not appear unreasonable, especially in the case where *no* exemption from taxation was stipulated in the contract for these issues. But neither the author of the report nor its indorsers could have anticipated that within little more than five years after it was submitted to Congress, the Federal Government could have borrowed \$185,000,000 at four and a half per cent interest; and that twenty-five years afterward would be able to renew a debt of \$25,364,500 at two per cent per annum, or at a rate fifty per cent less than loans on the best corporate or private securities would have at the same time commanded.

The method of prosecuting the work contemplated by Congress of the commission, was at the outset a matter of no little embarrassment. There was practically no material or basis to work on, except the bare statutes authorizing war taxes, and no official collection of these was published by the Government until two years after the commencement of the war. There was no bureau of statistics in the Treasury, and in this department of the Government the officials to whom was assigned the duty of collecting and publishing reliable data relative to the trade and commerce of the country were untrained. No full and reliable statistics concerning any branch of trade or industry in the United States, with possibly a very few exceptions, were then, or ever had been, available. The Treasury received returns of the aggregate of revenue collected and the sources whence it was derived; but these returns were rarely, if ever, accompanied by any suggestions, derived from administrative experience, of any value. The commercial returns from the customs were hardly worth the paper on which they were written. Thus, for example, when the duty on the importation of coffee

came up for consideration as a source of revenue, the value of the coffee imported during the fiscal year 1864-'65 was officially returned at ten and a half cents per pound, while its average invoice price, according to the trade of New York for the same period, was not less than thirteen cents. Again, according to the Treasury statement, the aggregate imports of coffee for the same year were 104,316,581 pounds. Of this amount 82,353,000 pounds, which were retained for domestic consumption, had a returned value of only six and four tenths cents per pound, while the value of 21,962,000 pounds of the same imports which were exported during the same year had the extraordinary value of nearly twenty-five cents per pound. For the year 1863 the Treasury reported an aggregate import of spirits distilled from grain of 1,064,576 gallons, but of this quantity only 45,393 gallons were entered at the ports of Boston, New York, Philadelphia, Baltimore, and San Francisco, leaving an inferential import of 1,019,183 gallons at other ports of the loyal States that practically had no foreign commerce.

In the Bureau of Internal Revenue a better system prevailed; but this department of the Treasury being always overburdened with work, and its service largely rendered by assessors and collectors who were destitute of business training, contributed but little in the way of deductions from experience. It had, moreover, at one time as its head an official who subsequently in a higher position refused to allow data to be collected in respect to certain taxes, on the ground that the less the people knew about such matters the better it was for the Treasury.

Another great source of difficulty experienced by the commission in conducting investigations with a view of arriving at any correct estimates of the prospective revenue of the country was the abnormal condition of every branch of trade and industry after 1861, due primarily to the war disturbances, and next to the frequent alterations in the rates of taxation. Every advance made in tariff, or internal revenue taxes, was anticipated to such an extent by importers, manufacturers, dealers, and speculators that the Government could not fairly test the capacity of any one of its great and legitimate sources of revenue. Thus, for example, the almost incredible profits made by reason

of anticipation of the large and repeated advances in the taxes on distilled spirits have already been pointed out. Of cigars, in like manner, it was estimated that above eighty millions had been made and stored at one time in the city of New York alone, in anticipation of a higher tax; and in the case of the comparatively insignificant article of matches, on which the tax was only one cent per bunch, the stock accumulated in anticipation of an advance of tax was so large that it was not entirely exhausted for a subsequent period of three years.

In the absence of any specific instructions, either from Congress or the Secretary of the Treasury, it was difficult for the commission to form an opinion as to the best method of entering upon the comprehension and reform of a scheme of taxation which embraced almost every form of tax that the ingenuity of man could devise, and with an incidence on almost every form of property, business, profession, or occupation that was capable of yielding to the State a revenue. The conclusion arrived at, after no little consideration, involved a complete abandonment of any idea of endeavouring to enter upon and comprehend the whole field of inquiry at the outset; and in its place, and in accordance with the maxim attributed to Emerson, that the eye sees only what it brings to itself to see, it was determined to take up and study specifically the sources of public revenue in the order of their importance; and give no attention to any other subject, or attempt to theorize, until everything that domestic experience or the experience of other countries could teach concerning them had been made familiar. In practically carrying out this idea, the chairman of the commission put himself in direct and frequent communication with revenue officials and representative business men from every section of the country; and availing himself of the power to take testimony, under oath, he often came into the possession of important facts which in daily life had been screened from the eye of the public. The result was that the commission presented to Congress, through the Secretary of the Treasury, in January, 1866, a report which gave for the first time a full, clear, and exact statement of the curious and complex scheme of internal and customs revenue that had been evolved, as it were, out of the financial necessities



contingent on the prosecution of a gigantic war: which involved the raising by taxation during the war period (and exclusive of loans) of an aggregate of over \$2,000,000,000, and a not infrequent daily disbursement (expenditure) of over two million dollars; and in addition to this feature the report contained special and elaborate exhibits on distilled spirits, fermented liquors, petroleum, cotton, tea, coffee, sugar, spices, proprietary articles, and patent medicines as sources of Government income, with estimates of the amount of revenue which the Treasury might annually expect if taxation at various rates on the same was to be continued; the whole being really the first practical attempt in the United States to gather and use national statistics for great national purposes.\*

On the termination by statute of the Revenue Commission, in January, 1866, its chairman was appointed to an office specially created by Congress, for a period of four years, with the title of "Special Commissioner of the Revenue" of the United States; and the duties of which were thus defined by statute:

*"He shall from time to time report through the Secretary of the Treasury to Congress, either in the form of bill or otherwise, such modifications of the rates of taxation, or of the methods of collecting the revenues, and such other facts pertaining to the trade, industry, commerce, or taxation of the country as he may find by actual observation of the law to be conducive to public interest."*

In this office, and invested with large powers, its incumbent entered upon the work of co-operating with the appropriate committees of Congress—"Ways and Means" of the House and "Finance" of the Senate—in reconstructing the then existing and extraordinary system of the United States internal revenue; and under his initiation and supervision were originated almost all the reforms in this department of the Government that were considered or enacted by Congress between the close of the war and the year 1870; namely, the redrafting of nearly the whole body of complicated and often conflicting

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\* Reports of a Commission appointed for a Revision of the Revenue System of the United States, 1865-'66; Washington, 1866, p. 483. Some of the special reports were issued separately.



statutes; the reduction and final abolition of the taxes on crude products—especially cotton, salt, lumber, petroleum, and the metals—and most of the taxes on manufactures; the creation of supervisory districts and the appointment of supervisors; the origination of the use of stamps for the collection of taxes on distilled spirits, fermented liquors, tobacco, and the sales of stockbrokers (the last in place of a general tax of one twentieth of one per cent on sales); and the creation and organization of the Bureau of Statistics as a branch of the national Treasury. These modifications brought the internal revenue duties within a reasonable compass, introduced systems where the want of it was working mischief, and by their ready application in administration reconciled the people to a maintenance of important sources of revenue and a continuance of taxes, which have by their stability and steady increase enabled the Government to meet financial exigencies otherwise awkward and dangerous. The service thus rendered met with recognition at the time both in and out of Congress, and was strongly indorsed by those most interested—the head of the Treasury and the industries taxed.\*

The work of taking down the vast and complicated structure of internal taxation, which had been built up during the war, having been once seriously entered upon by Congress (in 1866), it was prosecuted so vigorously that in the comparatively short space of three years the

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\* "I do not believe that any man appointed by the Government in the civil war has done for his country more work, and more valuable work, than David A. Wells. Into the financial chaos resulting from the war he threw the whole weight of a strong, clear mind, guided by an honest heart, and he has done more, in my judgment, to bring order out of chaos than any one man in the United States."—*Speech of General James A. Garfield, Member of Congress, United States House of Representatives, July 13, 1868.*

"There are few of my official acts that I look upon with more satisfaction than the appointment of David A. Wells to be Revenue Commissioner. All the reports that were made by him exhibited the most careful, painstaking, and intelligent investigation. In clearness and accuracy of statement, and in logical force, they have not been surpassed on either side of the Atlantic. Their ability was admitted, even by those who disagreed with the writer in his conclusions."—*Men and Measures of Half a Century, by Hugh McCulloch, Secretary of the Treasury during the Administrations of Presidents Lincoln, Johnson, and Arthur.*

aggregate annual receipts from such taxes were reduced from \$310,906,000 in 1866 to \$160,039,000 in 1869—a reduction of \$150,867,000—and to \$102,644,000 in 1872, a further reduction of \$57,395,000; while the sources of revenue, the annual receipts from each one of which were specifically reported, were reduced from about two hundred and seventy-five in 1866 to nominally sixty-six in 1872; but practically to three—distilled spirits, fermented liquors, and tobacco—the receipts from which alone in 1893 were \$150,865,000 as compared with \$91,464,000 in 1872. It should, however, be noted that this remarkable increase of revenue, coincident with a large reduction in the number of taxed articles, was due mainly to an increase of consumption consequent upon an increase of population during the period under consideration (26,230,000) rather than to any increase in the rate of taxes imposed upon the remaining sources after 1872.

Of many other curious and instructive economic experiences, consequent upon the rapid and radical changes in the fiscal policy of the United States during the period under consideration, the following seem especially worthy of notice: The first abatement or repeal of internal taxation on various articles after the war—to the extent of about fifty millions in 1866—was not attended with any general and immediate reduction in the prices of the articles relieved, corresponding to the reduction of taxation, but with rather an increase of prices. The explanation of this circumstance was, that the continuance of the heavy war taxation, for a period after the extensive war demands of the Government for various commodities had ceased, had diminished their production to a point below what would have been the normal consumption of the country; and that, therefore, prices increased concurrently with the abatement of taxes and a renewal of demand. Such a result was, however, but temporary, and the condition of affairs was soon reversed. The supply of manufactured products quickly became equal to or exceeded demand. The price of products fell faster than the price of either labour or capital, and taxation, which formerly had been paid wholly from profit, now fell mainly upon capital. The general result was a year (1867) of great industrial and commercial depression.

The enlarged use of stamps as machinery for the collection of taxes, and their novel application to fermented liquors and distilled spirits, were attended with very striking results. In the case of fermented liquors (beer), it was established almost beyond doubt by the Revenue Commission that previous to 1866 the Government was defrauded of its legitimate revenue to an extent of forty per cent, involving an absolute annual loss of about \$6,400,000. The adoption, with no little hesitation by Congress in 1866, of the principle, that the payment of the tax on this commodity should be effected by the purchase and affixing a stamp to each barrel sold and removed from the place of manufacture, with the additional requirement that the stamp should be cancelled by the retailer or consumer at once, increased the revenue from \$3,657,000 in 1865 to \$5,115,000 in 1866—the year of first application—and to \$5,819,000 in 1867; and ever since has proved most effective and satisfactory.

A recommendation to make use of stamps for the collection of taxes on tobacco was acceded to by Congress in respect to smoking tobacco and snuff, but was refused in respect to chewing tobacco, cigarettes, and cigars; in the latter case on the assumption that it was impracticable to affix an adhesive paper stamp on the body of a cigar, while the “trade,” not long afterward, and at its own volition, demonstrated its entire feasibility. Had the recommendation in this particular found favour, it would have resulted in an accretion of many millions to the national Treasury, a relief from espionage and other frictions to the trade, and a larger diminution of administrative expenditures both to the trade and the Government.

The experience of the Federal Government in its taxation of distilled spirits is extraordinary, and so replete with instruction to economists, moralists, and social reformers as to merit a more extended notice.

The product of distilled spirits in the United States for the year 1860, as returned by the census, was about 90,000,000 gallons. It would be an error to assume that all of this immense production of spirits was used for intoxicating purposes, or in the way of stimulants, inasmuch as the extreme cheapness of spirits or alcohol in the United States during the period under consideration occa-

sioned their employment in large quantities for various industrial purposes; which uses were subsequently in a great degree discontinued when the price of spirits was enhanced from one hundred to one thousand per cent and upward by Federal taxation. For 1860-'61, the year preceding the war, the average price of proof spirits in Cincinnati was 14.40 cents per gallon.

From 1822 to 1862 distilled spirits, in common with all other domestic industrial products, were exempt from Federal taxation. In the latter year, under the necessity for revenue occasioned by the war, Congress imposed a tax of twenty cents per proof gallon on all distilled spirits of domestic production. This tax went into effect on the 1st of September, 1862, and continued in force until March, 1864. The total revenue derived from this source, including the receipts from licenses for rectifying, vending, and the like, for the fiscal year 1863, was \$5,176,530. The receipts from the direct tax on the spirit itself were \$3,229,990, indicating a domestic production of only 16,149,954 gallons as compared with a production of 90,000,000 gallons returned under the census of 1860, three years previous. The explanation of this result is to be found in the fact that a large amount of whisky was manufactured in anticipation of this low tax, and that there were doubtless some evasions of the tax after it was enacted—conditions that were repeated, as will be presently shown, in a greater degree on every occasion when an advance in the tax was enacted.

The tax of twenty cents continued in force until March 7, 1864, when the rate was advanced to sixty cents per gallon. The revenue accruing under these two rates for the year ending June 30, 1864, was \$28,431,797, and the number of gallons returned as having been assessed was 85,295,393. The striking discrepancy between the number of gallons taxed in 1864 at twenty and sixty cents and the number taxed the previous year (1863) at twenty cents again finds explanation in the fact that when it became evident to the distillers that the fiscal necessities of the Government would soon compel an advance in the tax upon their product, and that such increase would not be made applicable to stocks on hand on which the lower rates had been assessed and paid, they pushed their pro-

duction to the uttermost in order that they might take advantage of the great increase in the market price of all spirits after the advanced rates had taken effect; all which anticipations were fully realized. Thus, of the 85,295,393 gallons on which the Internal Revenue Bureau assessed and collected the spirit tax for 1864—69,000,000 in excess of the product of the preceding year—at least 70,000,000 gallons were manufactured prior to the 7th of March and were released from Government control by the payment of the twenty-cent tax only; and as after the 7th of March, 1864, the market price of the greater part of this increased product, which had not been allowed to pass into consumption, was advanced in accordance with the advance in the tax—i. e., forty cents per gallon—it is clear that \$28,000,000 at least were thus at once legislated into the pockets of the distillers and speculators concerned.

Again, immediately after the imposition of the sixty-cent rate in March, 1864, nearly all the distilleries once more suspended operation; the country was acknowledged to be overstocked with tax-paid whisky, and the Government almost ceased to collect taxes upon its manufacture. In May, however, the project for a further increase in the rates began to be again agitated in Congress, and as soon as its realization became probable, all the distilleries speedily resumed operations. How great at that time was the capacity of the loyal States for production may be inferred from the circumstance that the number of distilleries in the country, which according to the census of 1860 was 1,138, had increased in 1864 to 2,415.

On the 1st of July, 1864, the tax was again advanced from sixty cents to a dollar and a half per gallon; and during that month the entire product of the country of which the revenue officials could take cognizance was only 697,099 gallons. How great a "stock on hand," the result of manufacturing under the twenty and sixty cent rates of tax, was carried over the 1st of July and experienced the advance of ninety cents per gallon in market price in consequence of the advance in the tax from sixty cents to a dollar and a half, can not be accurately known; but 60,000,000 gallons would certainly be a low estimate; and on this amount the profit that accrued to private interests was at least \$50,000,000.

On the 1st of January, 1865 (the succeeding year), the tax was further advanced to two dollars per proof gallon, when all the operations above described were repeated, with all the benefits to private or speculative interests derived from former experiences, and a consequent very large extension of the sphere of participants in the resulting profits.

In short, all the available evidence indicates that the profits realized by distillers, dealers, and speculators, through congressional legislation having reference to the taxation of distilled spirits from July 1, 1862, to January 1, 1865—a period of two and a half years—and exclusive of any gains accruing from evasions of taxes, and with every allowance for overestimates, must have approximated \$100,000,000.

After the establishment of the two-dollar rate on the 1st of January, 1865, there was again a period of inactivity on the part of those interested in the manufacture of distilled spirits. The stocks on hand, manufactured in anticipation of the advances in rates, were very large, and, the markets being oversupplied, there was little legitimate inducement for activity on the part of distillers. The profits realized or made prospectively certain had been, moreover, enormous, and no further advance in the rate of tax could be anticipated. Under such circumstances there was an apparent disposition on the part of manufacturers and speculators to wait and see what developments in legislation and business would follow the termination of the war in favour of the Union, which was then everywhere recognised as approximately certain. These developments were not long in manifesting themselves.

The tax of two dollars per proof gallon (amounting to more than 1,500 per cent on the average cost of production) and the enormous profits contingent upon the evasion of the law, coupled with the abundant opportunity which the law through its imperfections, and the vast territorial area of the country, offered for evasion, created a temptation not to be resisted. This view was taken by the Revenue Commission in a report to Congress through the Secretary of the Treasury in February, 1866; \* and

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\* This constitutes the fifth of the special reports contained in the Reports of the Commission, 1865-'66.

the chairman of the commission, after a thorough investigation of the subject and the collection and presentation of a large amount of evidence, expressed the opinion that the attempt to collect a two-dollar tax was utterly impracticable, and that the longer it was retained the less would be the revenue and the greater the corruption. He also coupled this opinion with a recommendation that a tax of fifty cents per proof gallon, with a judicious license system for rectifiers and dealers, be substituted as likely to be most productive of revenue and most efficient for the prevention of illicit distilling and other revenue evasions.

This report, although attracting much attention by reason of the singular revenue experiences of the preceding four years which it detailed (and which the public, with its thought concentrated on the results of the war, had in a great degree overlooked), found little favour in respect to its recommendation of tax abatement; and the general sentiment both in and out of Congress was expressed by a leading member of the House of Representatives, who publicly declared that "he was not ready to admit that the nation which had put down such a great rebellion at the cost of so much blood and treasure could not collect a tax of two dollars a gallon on whisky." \* The two-dollar tax therefore was allowed to remain in force, and the tax experiences of the United States from 1865 to 1869 inclusive, in respect to spirits, viewed from the standpoint of finance, economics, and morals, constitute one of the most interesting, instructive, and disgraceful chapters in its history. Under the strong temptations of large and almost certain gains, men rushed into schemes for defrauding the revenue with the zeal of enthusiasts for new gold fields; and the ingenuity of the American people has never had more striking illustrations than were offered in their devices for evading the tax and providing for security against detection and punishment in so doing. The parties concerned in these transactions also showed throughout more ability than Congress and

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\* Of the then leading members of Congress, only two—the late President Garfield and Hon. W. B. Allison, both members of the House of Representatives—indorsed the recommendation of the commissioner at the outset.



more shrewdness than the revenue department of the national Treasury; and at a later period a Secretary of the Treasury was obliged to resort to the use of a cipher for his telegraphic and written correspondence, in order to prevent the frustration of his plans for the enforcement of the laws by Treasury officials who were specially charged with their administration. The evidence in part confirmatory of these statements is as follows:

The revenue directly collected during the fiscal year 1866 (the first full year under the two-dollar tax) from spirits distilled from other materials than fruits \* was \$29,198,000, and in 1867 \$28,296,000, indicating an annual product respectively of 14,599,000 and 14,148,000 gallons. But during the succeeding year, 1868, with no apparent reason for any diminution in the national production and consumption of spirits, and with no increase, but rather a diminution, in the volume of imported spirits, the total direct revenue from the same source was but \$13,419,092, indicating a production of only 6,709,546 gallons.

As the consumption of distilled spirits in this latter year was probably not less than 50,000,000 gallons, and as out of this the Government collected a tax upon less than 7,000,000, the sale of the difference at the current market rates of the year, less the average cost of production (even if estimated as high as thirty cents in currency), must have returned to the credit of corruption a sum approximating \$80,000,000.

Another curious feature developed was, that the number of distilleries in the country increased just in proportion as the tax on spirits was augmented; the inducement of the great profit to be obtained from a high rate of tax—the two-dollar rate especially—undoubtedly tempting many to engage in illicit manufacturing who would be unwilling to do so with a certainty of realizing a much smaller rate of profit. Of many curious examples of evidence to this effect, the following reference is particularly interesting: In the eighth collection district of the State of New York there was, before the internal revenue law

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\* The revenue derived from the taxation of spirits distilled from fruits has always been comparatively small: \$283,499 in 1866; \$868,145 in 1867.



went into operation in 1862, but one distillery. When the first tax of twenty cents per gallon was imposed, six additional distilleries were started. Under the sixty-cent rate about one dozen were in operation. But this number, under the two-dollar tax, increased to about forty. Furthermore, the tax collected at one distillery in the same district in one month in 1864, under the sixty-cent tax, was one third more than was paid in the aggregate by thirty distilleries in the district in the eight months succeeding November, 1865, when the tax was two dollars; or, to state it differently, one distillery in one month in 1864 paid \$58,819, at sixty cents per gallon, while thirty distilleries in eight months in 1866 paid, at two dollars per gallon, only \$33,664. For the entire country the number of licensed distilleries, which in 1864 was 2,415, was returned in 1868 at 4,721—an increase of nearly 100 per cent in the short space of four years.

Thus confronted with positive evidence of astounding frauds which the Government that put down a great rebellion virtually confessed that it could not prevent, and a steadily diminishing revenue from what ought to have been a steadily increasing source, Congress finally became thoroughly alarmed, and, acceding to the recommendation of the Special Commissioner of the Revenue, reduced (in July, 1868) the direct tax on distilled spirits from two dollars to fifty cents per proof gallon.\*

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\* The statement that the tax on distilled spirits was reduced from two dollars to fifty cents per gallon in 1868 has been criticised (see letter of United States Commissioner of Internal Revenue, embraced in report of the Secretary of the Treasury for 1893) as not in accordance with the statement that the tax imposed in the above-mentioned year was not fifty but seventy cents per gallon. The only warrant for such criticism to be found in the circumstance that the statute of 1868, which fixed the direct tax on spirits at fifty cents per gallon, and none other, also contained separate and independent provisions imposing licenses, taxes on capacity of stills, and on the sales of dealers, with some modification of the fees of gaugers and storekeepers; and that these additional assessments brought up the tax from fifty to seventy cents per gallon. But this reasoning overlooked two essential features of the act—namely, that the direct tax on every proof gallon must be paid by the distiller, owner, or other person having possession thereof, before removal from the distillery or warehouse; and next, that none of the indirect and supplementary taxes could be assessed or collected until after the direct tax (of fifty cents) had been

The results of such legislation were immediate and most remarkable. Illicit distillation practically ceased the very hour the new law came into operation. Industry and the arts experienced a large measure of benefit from the reduction in the cost of spirits; while the Government collected during the second year of the continuance of the new rate and system, with comparatively little friction, *three* dollars for every one that was obtained during the last year of the two-dollar tax. Assuming, as is warranted, that with a continuance of the two-dollar tax there would have been no increase in the revenue from distilled spirits beyond what accrued in 1868—the last year of its existence—the gain in revenue to the Government in the succeeding two years from the adoption of the fifty-cent rate was at least sixty million dollars. Furthermore, but for the injudicious but popular speech (to which reference has been made) at an opportune moment in committee by a statesman who had bestowed but little attention to the subject, the reduction of the tax from two dollars to fifty cents per proof gallon would undoubtedly have been anticipated by a year, and attended with like gainful results. The cost of this speech, therefore, to the national Treasury may be rightfully estimated as at least ten million dollars. The record of this chapter of the tax experience of the United States also forcibly illustrates the impolicy and disaster of embodying any fiscal policy in statute enactments without a

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paid; the license taxes, for example, varying according to the product of the distillery, and payable in block, at different specified times. A great and novel object here sought for—namely, of diminishing the inducements to fraud, by directing the collection of the direct and supplementary taxes on spirits as respects persons, places, and times—was fully achieved; for, although the aggregate of the direct and indirect tax on spirits undoubtedly increased their cost to their final consumers, the largest possible gain to the distiller from the evasion of the separate and comparatively small indirect taxes which contributed to this increase, even apart from the risks of punishment involved, were too small to be worthy of his attention. The effort, therefore, to attempt to minimize by sophistical reasoning the remarkable effect of the reduction in 1868 of the tax on distilled spirits to fifty cents has no rightful claim for consideration, and unquestionably was prompted by a very general but unwise public sentiment, that it is desirable always to subject the manufacture and sale of spirituous and fermented liquors to exceptionally high rates of taxation.

previous study and full comprehension of all the elements involved.

For the first but incomplete fiscal year (1869) under the fifty-cent tax the revenue increased to the extent of nearly \$20,000,000, or from \$14,290,000 in 1868 to \$33,735,000 in 1869; or, including all taxes on the manufacture and sale of distilled spirits, licenses, etc., from \$18,655,000 in 1868 to \$45,071,000 in 1869. During the next fiscal year (1870) there was a further increase in the total revenue of \$10,534,864, or from \$45,071,000 in 1869 to \$55,606,094 in 1870.

The specific tax on distilled spirits of fifty cents per proof gallon remained in force from July, 1868, to August, 1872, a period of a little more than four years. During this period the tax was assessed and collected on an average production of 67,175,822 proof gallons per annum, yielding an average annual revenue of about \$34,000,000, and indicating an average annual consumption for all purposes of the country of about 1.65 proof gallons per capita. For the period of four years immediately preceding the fiscal year 1869, under a tax of two dollars per proof gallon for three years, and a dollar and a half and two dollars for one year (1865), the tax was assessed and collected on an average annual production of only about 13,300,000 proof gallons per annum, yielding an average annual revenue of about \$21,727,000, and indicating an average annual consumption of only about 0.38 proof gallon per capita.

But, notwithstanding these satisfactory results, the law authorizing the reduction of the tax from two dollars to fifty cents per proof gallon had hardly become operative when agitation commenced for its repeal or modification. Speculators had the idea that the old scheme of increasing the tax after a little lapse of time, without making the increase applicable to stocks on hand, was, with its gainful prospects, again within the range of possibilities; while very many extreme advocates of temperance, untaught by and caring nothing for the record of recent experience, were inclined to regard the new and comparatively low tax as impolitic and in the light of the removal of a barrier against the spread of intemperance. These and other arguments proved sufficiently potent, and in June, 1872, Congress, by an act which took effect in the following

August, increased the gallon tax to seventy cents, and subsequently, in March, 1875, raised the rate to ninety cents per gallon, and in August, 1894, further increased it to a dollar and ten cents, the present rate.

It is not necessary to recall that the experiences which were attendant upon every advance of the tax on spirits from its first imposition in 1862 to 1868 were repeated subsequently in 1872 and in 1875, when the increased rates of seventy and ninety cents were respectively enacted; those of the latter date being remarkable from the circumstance that the frauds upon the revenue, which were enormous, were more directly brought home to high officials of the Government than at any former period, and constitute a chapter in the history of government by the people which the people may well wish forgotten.

The above review of the experiences of the United States prior to 1869, in attempting to enforce the collection of an excessively high tax on the production and consumption of distilled spirits, is mainly valuable in this connection from the economic and moral lessons deducible from it, which may in brief be summarized as follows:

Whenever a government imposes a tax on any product of industry so high as to sufficiently indemnify and reward an illicit or illegal production of the same, then such product will be illicitly or illegally manufactured; and when that point is reached, the losses and penalties consequent upon detection and conviction—no matter how great may be the one or how severe the other—will be counted in by the offenders as a part of the necessary expenses of their business; and the business, if forcibly suppressed in one locality, will inevitably be renewed and continued in some other. It is therefore matter of the first importance for every Government in framing laws for the assessment and collection of taxes to endeavour to determine, not only for fiscal but also for moral purposes, when the maximum revenue point in the case of each tax is reached, and to recognise that in going beyond that point the Government “overreaches” or cheats itself.

Obviously those who in the past have shaped the policy of the United States in respect to the taxation of distilled spirits for the purpose of revenue have, for the most part, never studied this aspect of the case or cared to en-

courage any one to do so; but, on the contrary, as has been somewhat humorously expressed, "they have held out to the citizen, on the one hand, a temptation to violate the law too great for human nature as ordinarily constituted to resist, and in the other writs for personal arrest and seizure of property, and, thus equipped, have announced themselves ready for business."

The data officially collected and reported by the Internal Revenue Department of the United States Treasury furnish the only reliable basis for obtaining approximately correct answers to the following questions: 1. To what extent, through a well-considered system of taxation, can the manufacture and sale of distilled spirits be made available as sources of national revenue? 2. What has been and is the probable per capita and aggregate annual consumption of this class of spirituous liquors by the people of the United States? The first of these questions is eminently pertinent to the legislator; the second, to the student and advocate of social reform.

The experience derived from the taxation of distilled spirits previous to 1869 by the Federal authorities was so unnatural and, as it were, spasmodic as to debar its use for the determination of any general or average conclusions, and limits inquiry to the results which followed in subsequent years (1870-1898), under lower and more rational rates of taxation, and a more efficient and intelligent fiscal administration. And for the purpose of making a clear exhibit of these, attention is asked to the following table (prepared from official data), showing (1) the population of the country for each successive fiscal year from 1870 to 1894, inclusive; (2) the quantity of gallons of spirits annually taxed; (3) the average per capita consumption for each successive year: (4) the amount of revenue annually collected; (5) the average annual revenue, or tax per capita; (6) the annual tax per gallon; (7) the average tax per gallon.

The first point of interest which an examination of the above table reveals is, that the average per capita consumption of tax-paid distilled spirits by the people of the United States during the years 1870, 1871, 1872, and 1873, under the tax of fifty cents per gallon, was greater than it has been at any subsequent period under a seventy

YEAR ENDING JUNE 30	Population.*	Quantity taxed.†	Quantity per capita.	Revenue.	Revenue per cap- ita.	Tax per gallon.	Average tax per gallon.
		Gallons.	Gallons.	Dollars.	Doll'rs	Cents.	Cents.
1870..	38,558,371	78,490,198	2.08	89,245,099	1.02	.50	50
1871..	39,555,000	62,814,628	1.58	81,157,814	.79	.50	50
1872..	40,596,000	66,235,578	1.63	88,117,788	.82	.50	50
1873..	41,677,000	65,911,141	1.58	48,131,064	1.03	.50	65.14
1874..	42,796,000	62,581,562	1.46	48,807,093	1.02	.70	
1875..	43,951,000	64,425,911	1.47	46,877,938	1.07	.70	72.76
1876..	45,137,000	58,512,693	1.30	51,890,490	1.14	.90	
1877..	46,353,000	58,043,389	1.25	52,671,291	1.14	.70	89.97
1878..	47,598,000	50,704,189	1.07	45,626,533	.96	.90	
1879..	48,866,000	53,025,175	1.09	47,709,464	.08	.50	89.98
1880	50,155,783	62,182,415	1.23	55,919,119	1.11	.70	
1881..	51,316,000	69,127,206	1.34	62,214,127	1.24	.90	90
1882..	52,495,000	71,976,398	1.37	64,778,756	1.23	.70	
1883..	53,693,000	76,762,063	1.43	69,085,856	1.22	.90	90
1884..	54,911,000	79,616,901	1.45	71,655,211	1.30	.90	
1885..	56,148,000	69,158,025	1.23	62,242,221	1.23	.70	90
1886..	57,404,000	70,851,355	1.23	63,766,219	1.11	.90	
1887..	58,680,000	67,380,391	1.15	60,642,351	1.03	.90	90
1888..	59,974,000	71,565,486	1.19	64,408,937	1.07	.90	
1889	61,289,000	77,163,529	1.25	69,447,175	1.18	.90	90
1890..	62,622,250	85,043,336	1.35	76,539,002	1.22	.90	
1891..	63,975,000	88,473,437	1.38	79,626,093	1.24	.90	90
1892..	65,520,000	95,045,787	1.45	85,541,209	1.31	.90	
1893..	66,826,000	99,145,889	1.48	89,231,300	1.34	.90	90
1894..	68,275,000	88,777,387	1.30	79,899,647	1.17	.90	
1895†.	69,753,000	75,555,742	1.08	74,837,396	1.07	1.10	99
1896..	71,263,000	68,480,720	.96	75,327,898	1.05	.90	
1897..	72,807,000	69,979,362	.96	76,967,257	1.05	1.10	110
1898..	74,389,000	79,764,749	1.07	87,741,223	1.18	.90	
						1.10	110

See notes for this table on the opposite page.

and ninety cent rate. Such a result is undoubtedly referable in the main to the economic law that a reduction in the price of a commodity encourages its consumption (in this instance for industrial as well as stimulant purposes), and in a degree to the fact that a fifty-cent tax, with its accompaniment of stringent penalties, greatly diminished the incentive for illicit production. A wonderfully striking illustration of the strength of temptation for the evasion of the revenue created by the previous high taxation, which had little other reason than mere sentiment for its imposition, is also afforded by the fact that while the Government in 1872, under a tax of fifty cents per proof gallon, took cognizance of an average annual tax-paid consumption on the part of the people of the United States of 1.63 gallons per capita, it was only able to recognise in 1868, under a two-dollar tax, a similar average annual consumption of about 0.38 proof gallon per capita.

The second point of interest in connection with the foregoing tabular exhibit is the demonstration it affords of the very curious variations which occurred in the successive years from 1870 to 1898, inclusive, in the quantity of spirits that annually paid taxes to the Government, and which may be regarded as constituting an approximately accurate measure of the average annual per capita consumption of this commodity by the entire population of the country. The explanation of such changes is not difficult. They are in general unquestionably referable to immediately antecedent or contemporary changes in the business condition of the country, which in turn are determinative in a high degree of the popular ability to consume an article—like distilled spirits—of comparatively high

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\* Population for 1870, 1880, and 1890 from census; other years calculated by the actuary of the Treasury Department.

† In 1895 the withdrawals included 41,369,604 gallons, on which the tax was 90 cents; in 1896, 4,475 gallons, at 90 cents; and in 1897, 50,206 gallons. The acting Commissioner of Internal Revenue, in a letter to the Secretary of the Treasury, dated April 3, 1897, amply verified the predictions made in the text. After referring to the "greatly increased incentive to fraud furnished by the present high rate of tax," he suggested the prompt reduction to 90 cents, and even to 70 cents, the latter being in his opinion the highest revenue-producing rate.

‡ Includes fruit brandies.



cost and largely a luxury, popular tastes and habits and restrictive moral influences remaining constant. Thus, passing by the year 1870, in which there was a great increase (from altogether abnormal causes) in the number of gallons produced and made subject to taxation, the increase in the tax-paid product and in the average per capita consumption during the succeeding fiscal years 1872 and 1873, when the business of the country was fairly prosperous, was regular and not inconsiderable. The commencement of the next fiscal year (1874) was signalized by one of the most memorable financial panics in American history and a general prostration of business, from which last there was no decided recovery until 1879.

During all this period the domestic production of distilled spirits of which the Government took cognizance continued to decline, and the average per capita of consumption touched the exceedingly low proportions of 1.07 and 1.09 gallons in the fiscal years of 1878 and 1879 respectively. With a renewal of active and profitable business throughout the country in 1880, the annual taxed production of spirits went up from 50,704,189 gallons in 1878 to 79,616,901 gallons in 1884, and the per capita consumption from 1.07 gallons to 1.45 gallons in the corresponding years. During the period from 1871 to 1880 there was a decrease both in the quantity of spirits on which the Government was able to collect a tax and in the apparent per capita consumption of the people, and this, too, notwithstanding an increase during this same period of thirty per cent in the population of the country; 1871 showing a tax on sixty-two and one third millions (1.58 gallons per capita), while in 1879 the tax was collected on only fifty-three million gallons (1.09 gallons per capita).

The decade from 1870 to 1879 was further characterized by two periods of disturbance—which ought to be instructive in view of future legislation—occasioned by an advance in 1873 of the gallon tax from fifty to seventy cents, and again in 1875 from seventy to ninety cents. In both cases these advances in rates were followed by large annual reductions in the quantity of the spirits taxed and in an apparent per capita consumption, which in turn indicated extensive revivals of illicit practices



which the reduction of the tax to fifty cents in 1868 had nearly extinguished, and which indications were also made certainties by abundant direct evidence.

The decade of 1880 to 1889 showed, on the other hand, an increase in the aggregate amount paying taxes from sixty-two and one eighth million gallons in 1880 (1.23 gallons per capita) to seventy-seven and one eighth million gallons in 1889 (1.25 gallons per capita), an aggregate increase approximating a concurrent increase of twenty-two per cent in the population of the country.

During the fiscal years from 1888 to 1893, inclusive, under a uniform and prospectively stable rate of tax, an apparently good and efficient administration of the law, and a fairly prosperous condition of the country, the results in this department of our national revenues were very exceptional and interesting. The continuous increase in production, in per capita consumption, and in revenue was remarkable, the average increase in spirits paying taxes having been nearly 4,600,000 gallons per annum, or in a ratio greater than any concurrent increase in the population of the country; in average per capita consumption, nearly one third of a gallon; in average increase in revenue of nearly \$5,000,000 (\$4,910,000) per annum, the whole culminating for the fiscal year (1893) in a product of 99,000,000 gallons, an annual revenue of \$89,000,000, and a per capita consumption of 1.48 gallons. During the same period the per capita consumption of all spirits, domestic and foreign, in Great Britain was about 1.063 gallons.

The financial troubles and business depressions in Europe and other countries during the years 1892 and 1893 do not appear to have exerted the slightest influence on the production and consumption of distilled spirits in the United States. But the advent in 1894 of a similar state of affairs in the latter country speedily manifested itself, reducing the current per capita consumption from 1.48 gallons in 1893 to 1.3 gallons; the direct revenue from \$89,231,000 in 1893 to \$79,899,000; the current per capita consumption from 1.48 to 1.33 gallons, and the total annual revenue to the extent of \$9,461,008. The returns for 1896 and 1897 are still more conclusive on this point. The quantity consumed per capita touched a lower point than had been reached in any year since 1870.

The normal consumption of distilled spirits in the United States in 1894, as indicated by withdrawals from distilleries and warehouses, was about 8,000,000 gallons a month. The extent to which the increase in the direct tax on spirits by the act of August 28, 1894, from ninety cents to one dollar and ten cents per gallon, was anticipated by speculators is strikingly illustrated by the fact that an average monthly revenue from the lesser tax of about \$8,000,000 per month during the first six months of 1894 increased during the month of July and the first twenty-seven days of August to \$19,064,000 and \$21,470,000 respectively, and declined in the succeeding month of September to \$510,696.

Any review of the comparatively recent tax experiences of the United States would be incomplete that failed to notice its taxation (concurrent with that on distilled spirits) of domestic fermented liquors (beer, etc.). The internal revenue tax on this commodity was until 1897 practically uniform since its first authorization in 1863, namely, one dollar per barrel, holding theoretically thirty-one gallons. In 1898 the rate was increased to two dollars a barrel. The tax was originally assessed and collected on the returns of the brewers, and was largely evaded. After July, 1866, it was successfully enforced through the employment of stamps, one of which, "denoting the amount of the tax," is required to be affixed upon the spigot hole or tap (of which there shall be but one) in such a way that the stamp shall be destroyed upon the withdrawal of the liquor from the barrel or other receptacle. The table on the opposite page exhibits in detail the experience which has characterized each fiscal year since the inception of this source of revenue in 1863 down to and including 1898.

The points of interest made apparent in the foregoing tabular exhibit, and to which attention is especially asked, are as follows:

(1) The regular and great increase in the quantity of fermented liquors annually made subject to internal revenue taxation—i. e., from 62,205,375 gallons in 1863 to 1,071,183,827 gallons in 1893, and an increase in per capita consumption very far in excess of the rate of increase in population—i. e., from 1.86 gallons in 1863 to over sixteen gallons in 1893.

## CONSUMPTION OF FERMENTED LIQUORS.

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Years.	Population.	Quantity taxed.	per capita.	lected from barrel tax.	per capita.	of 81 gallons.
		Gallons.	Gallons.	Dollars.	Dollars.	Dollars.
1863...	33,865,000	62,205,375	1.86	1,558,088	.06	1.00
1864...	34,046,000	97,882,811	2.86	2,223,719	.07	.60
1865...	3	113,872,611	3.26		.11	1.00
1866...	3	158,569,340	4.47		.14	1.00
1867...	3	192,429,462	5.31		.16	1.00
1868...	3	190,546,558	5.15		.15	1.00
1869...	■	196,603,705	5.21		.16	1.00
1870...	3	203,813,127	5.29		.16	1.00
1871...	3	239,948,060	6.06		.18	1.00
1872...	■	268,442,237	6.61		.20	1.00
1873...	4	298,633,013	7.16		.21	1.00
1874...	4	297,627,807	6.95		.21	1.00
1875...	4	293,038,607	6.66		.20	1.00
1876...	4	306,972,912	6.80		■	1.00
1877...	4	304,111,860	6.56		.20	1.00
1878...	4	317,485,601	6.67		■	1.00
1879...	4	344,195,604	7.04		.21	1.00
1880...	50,155,783	413,760,441	8.25		.25	1.00
1881...	51,316,000	443,641,868	8.65		.26	1.00
1882...	52,495,000	526,514,635	10.01		.30	1.00
1883...	53,698,000	570,494,004	10.25		.31	1.00
1884...	54	588,057,100	10.78		■	1.00
1885...	54	594,764,543	10.59		■	1.00
1886...	5	642,068,923	11.18		■	1.00
1887...	5	716,767,306	12.21		■	1.00
1888...	5	765,066,789	12.77		.38	1.00
1889...	6	778,715,443	12.71		.38	1.00
1890...	6	854,420,264	13.64	25,494,798	.41	1.00
1891...	6	944,828,952	14.77	26,192,327	.44	1.00
1892...	6	966,852,916	15.01	29,481,498	.45	1.00
1893...	6	1,071,189,827	16.08	31,962,743	.46	1.00
1894...	68,275,000	1,033,378,278	15.18	30,884,674	.45	1.00
1895...	69,753,000	1,040,403,741	14.91	31,044,305	.44	1.00
1896...	71,263,000	1,110,609,088	15.03	33,139,141	.46	1.00
1897...	72,807,000	1,067,115,914	14.65	31,841,363	.43	1.00
1898...	74,389,000	1,162,292,486	15.62	33,885,152	■	1.00
						2.00

(2) The concurrent regular increase in revenue from this source—i. e., from \$1,558,000 in 1863 to nearly \$32,000,000 in 1893.

(3) The variations in the product of fermented liquors which the Government has been able annually to subject

to taxation since 1863 have been inconsiderable and in remarkable contrast to those occurring in the case of distilled spirits. Business depression from 1874 to 1879 and for the year 1884 appears to have been influential in checking per capita consumption, though in a small degree, and to have exerted little or no influence in the subsequent years, that are subject to analysis, down to 1894, when financial and industrial depression was again operative in the country, results indicating that similar larger and contemporaneous decrements in consumption and revenue in the case of distilled spirits were due to fraudulent practices, rather than to an impairment of ability to consume on the part of the masses.

(4) The average annual increase in the receipt of internal revenue from fermented liquors for the ten years from 1883 to 1892 was \$1,306,057, and for the four years ending with the fiscal year 1893 about \$1,617,000. That this latter ratio of annual increase under the present rate of tax of one dollar the barrel of thirty-one gallons is likely to indefinitely continue is almost demonstrated by the fact that the popularity of fermented or malt liquors as beverage among the American people is unquestionably increasing; and also that large, seemingly, as is their present average per capita consumption—namely, fifteen gallons—the present per capita consumption of the people of several other nationalities is much greater; that of the United Kingdom being estimated at thirty gallons; of England and Wales, thirty-six; of Belgium, forty; and of Germany, forty-five. An important fact pertinent to the prospective consumption of beer and its permanent value as a source of national revenue is, that the cost of the materials used in its manufacture has decreased in comparatively recent years, in the United States, Great Britain, and probably other countries characterized by its large consumption, to the extent of at least forty per cent; and the advantage from this change which has accrued to British brewers was stated by the British Chancellor of Exchequer, in May, 1895, to have been upward of £2,000,000 (\$10,000,000) per annum. Another point of interest in this connection which is especially worthy of attention is, that if moral influences have ever materially affected the general consumption of distilled spirits or fermented liquors

in the United States, the tabulated tax experiences of its Government, which constitute the only reliable basis for forming an opinion, do not afford any indication of it.

Having reformed and radically reduced the war taxes in the Department of Internal Revenue, it was next in order for Congress to consider the readjustment of the customs system of taxation, which had also been evolved, as it were, out of the war's fiscal exigencies; and it accordingly in 1867 instructed the Secretary of the Treasury to present at its next session the draft of a tariff embodying reductions of war rates. The responsibility of preparing such a draft having been next intrusted by the Secretary to the Special Commissioner of the Revenue, the latter, with a view of qualifying himself for the trust, visited Europe under a Government commission, and investigated under almost unprecedented advantages nearly every form of industry then competitive with the United States in Great Britain and on the Continent. The results of this visit and investigation effected an enlightenment on his part in respect to two salient and fundamental points:

*First*, that no country, with the exception of the United States, which had adopted in a greater or less degree the policy of protection through duties or restrictions on imports, had ever regarded the taxation of the imports of "raw," \* or crude, or partly manufactured materials, to be subsequently used for larger manufacturing, as an element of protection in its largest sense to its domestic industry, but rather as antagonistic to, and destructive of, such industry; and that, while such taxation in the United States had undoubtedly built up some industries and enriched their owners, it had been a great restraint on the development of a much larger and higher class of indus-

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\* The definition, or rather determination, of what constituted a "crude" or "raw" material for manufacturing purposes has always been a matter of embarrassment to legislators and economic writers, inasmuch as a confessedly manufactured and often elaborate product may be relatively a raw or crude material for successively higher grades or processes of manufacture. A proposition recently proposed by Mr. Lindley Vinton, of New York, to restrict the application of the above terms in law, commerce, and economics, to the state or condition in which any product *first* enters into trade or commerce, would seem to be so free from any ambiguity of meaning as to be worthy of consideration.

tries, employing a greater number of workmen, and paying much higher average wages. *Second*, that the countries of Europe in which the average rates of wages were lowest were the most clamorous for protective duties on imports; and that high wages in any country, conjoined with the extensive and skilful use of machinery, instead of being evidence of industrial weakness, were evidence of great industrial strength; inasmuch as no employer can continuously pay high wages unless his product is large, his labour most effective, and his cost of product, measured on the terms of labour, comparatively low.

The announcement of these views, and especially their publication in a report in 1869, created much antagonism among the advocates of the policy of extreme protection in the country; and Horace Greeley and others publicly charged that the commissioner had been induced to change his views through the corrupting agency of British gold. Notwithstanding this, a draft for a complete revision of the tariff of the United States, prepared under his almost sole supervision, and accompanied with a report on the existing revenue resources and industrial and financial condition of the country, was submitted to the Forty-first Congress by Secretary McCulloch, with his indorsement, in December, 1869. This draft, subsequently embodied in the form of a bill, with slight modifications by the Finance Committee of the Senate, came very near enactment into law, the Senate passing it by a vote of twenty-seven to ten. In the House of Representatives it failed in the closing hours of the second session by a very few votes, and not by a direct vote, but on a motion to suspend the rules, take the bill from the Committee of the Whole, and put it upon its passage. This motion, which required a two-thirds vote, was defeated—one hundred and six in the affirmative to sixty-four in the negative. It was thus made evident that, could the bill as it came from the Senate have been brought directly before the House, it would have passed by a large majority, and probably have quieted for years all difficult and disturbing legislation on this subject.

When the office of Special Commissioner expired by limitation in 1870, the appointment as chairman of a State commission, specially created for investigating the sub-

ject and laws relating to local taxation, was tendered to its late incumbent by the Governor (Hon. John T. Hoffman) of the State of New York, and accepted. This new position afforded an almost unprecedented opportunity and facilities for becoming acquainted with a practically new department of taxation; the taxes levied by the Federal Government being mainly of an indirect character, and subject to constitutional limitations; while those of the States are mainly direct, and practically subject to no limitations as to object, except as respects imports, exports, and the property and instrumentalities of the United States. The results of this new field of exploration were laid before the Legislature of the State of New York in the form of two reports (in 1871 and 1872), with an accompanying draft of a code of laws. The facts developed on this line of investigation, and which will be restated with much additional evidence in the following chapters, are generally regarded as antagonistic to the theory of taxation as accepted and taught by most economists, and incorporated into statutes by lawmakers. The Legislature to which these reports were submitted paid no further attention to them than to order their printing. They were, however, contrary to almost all precedent, reprinted in the United States and in Europe.

**NOTE.**—The writer would take this occasion to acknowledge his great indebtedness to the late Isaac Sherman, of New York, whose innate modesty and desire to avoid publicity alone prevented a general recognition by his countrymen of his great intellectual ability; and that this characterization is not unwarranted is proved by the fact that it was fully admitted by such men of his time as Samuel J. Tilden, Charles O'Connor, and Rev. Dr. Bellows; and also by the circumstance that he was the one man of all others that President Lincoln selected as his adviser in the most critical periods of the war, and to whom he repeatedly tendered the highest civil offices in his gift. Mr. Sherman took a deep interest in the work of the New York State Tax Commission; participated in its investigations; contributed to its councils a very thorough knowledge of the views of English, French, and German writers on taxation, and of the cognate opinions and decisions of American and European courts and jurists; and is entitled to equal credit for whatever of merit may pertain to its conclusions. If these conclusions, arrived at and expressed in the following chapters, do not meet the full concurrence of economists, the writer has the satisfaction of knowing that they received, in the main, the full indorsement of one so pre-eminently qualified to pass judgment upon them.

## CHAPTER II.

### THE PLACE OF TAXATION IN LITERATURE AND HISTORY.

ONE of the great historians of the present century has expressed disappointment at what he terms the "emptiness" of historical study, and accordingly inclines to the opinion that guidance in respect to human affairs in the future is to be sought for in present rather than in past experiences. Nevertheless, it would seem to stand to reason, that when any department of knowledge, especially one characterized by controverted questions, is to be comprehensively examined, with the prime object of determining the best methods for human action, it would not be expedient to attempt to discover or discuss any abstract principles which ought to govern such action, until at least a summary of facts derived from experience and essential to correct conclusions had been presented and made familiar, and, acting on this assumption, it is proposed next to ask attention—*first*, to the place of taxation, considered as a department of knowledge, in general literature; and, *second*, to some points of historical interest, growing out of the appropriation by states or rulers of the property of their citizens or subjects for real or assumed public purposes. It is believed that in this way the discussion at a later period of the principles growing out of the exercise by governments of this great prerogative may be facilitated and rendered more attractive.\*

POSITION OF TAXATION IN GENERAL LITERATURE.—All general treatises on political economy devote more or

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\* "No man can learn what he has not preparation for learning, however near to his eyes is the object. Our eyes are holden that we can not see things that stare us in the face, until the hour arrives when the mind is ripened; then we behold them."—*Emerson, Spiritual Laws, First Series of Essays, p. 139.*



less space to the consideration of taxation; and there have been many publications in the nature of official reports, compendiums of tax laws, and their interpretation by legal tribunals, and special essays on particular forms of taxes. But, at the same time, notwithstanding the vastness and importance of the subject, its symbolism and exemplification of sovereignty, its influence for weal or woe on every citizen and on every industry, according as the power involved is properly or improperly exercised, and the part it has played in history, its position in economic literature is so comparatively insignificant that there is not a single publication at present in the English language which is entitled to be considered as a full and complete treatise; certainly none such as are readily at the command of every person desirous of becoming reasonably proficient in any of the other leading branches of learning. Professor Cossa, of the University of Pavia, Italy, in a bibliography of taxation incorporated in a brief treatise on the Science of Finance, published in 1882, and brought up to the times by an American translation in 1888,\* does not mention even one title of this character. And although there are works on taxation more or less general in their scope in other languages—especially in French and German—and to some of which high merit is accorded, there are none which any considerable number of economists are willing to accept as standard or authoritative in all departments; the chapter on taxation in Adam Smith's *Wealth of Nations* constituting the only treatise which can possibly be regarded as an exception.† For such a result it is not easy

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\* *Taxation, its Principles and Methods*. Translated from the *Scienza delle Finanze* of Dr. Luigi Cossa, Professor of the University of Pavia, Italy; with an Introduction and Notes by Horace White. New York: G. P. Putnam's Sons, 1888.

† "It is well known that during the period from Adam Smith to the close of John Stuart Mill's activity—that is, for fully one hundred years—English political economy treated the science of finance" (embracing the raising of revenue) "as nothing better than a scanty appendage. It is a significant fact that no work worth mentioning on the science of finance has yet (1889) been published in the English language, though some considerable contributions have been made to financial history."—*Cohn's Science of Finance*.

Since this was written Professor Bastable has published his *Public Finance*, and Mr. H. C. Adams his *The Science of Finance*.

to account. Possibly, owing to the want of accord among writers on economic and financial subjects, an opinion has come to prevail that no consistent treatment of the subject, as a whole, is possible; that the financial and industrial condition of nations or states differs so widely that no uniform rules of practice for the raising of revenue can be established; and, finally, if such a code of rules were universally accepted, the varying necessities of nations would compel its violation, or complete abandonment, in periods of great emergency.

In the case of the United States the condition of the country previous to the civil war, as already pointed out, was very curiously such as to create great indifference to this, in common with almost every other economic or financial topic. The nation and the several States composing it were at the period referred to comparatively free from debt. All taxation was light. *Direct* taxation by the Federal Government had become a matter of history, no taxes of this character having been imposed for nearly half a century. Pauperism was mainly restricted to persons of foreign nativity, while to all who were willing to practise industry and economy, the ability to command a good subsistence, if not an ultimate competence, seemed comparatively easy. Why should a nation under such circumstances trouble itself about difficult and intricate problems in finance or political economy? And taking counsel of the proverb, "Sufficient unto the day is the evil thereof," the nation did not. But, with the advent of war in 1861, the creation of an enormous national debt, and a gigantic, unsystematic, and complex system of taxation, a resort to irredeemable paper money and the suspension of specie payments, the condition of things as above stated rapidly changed; and the questions and problems which in popular estimation were before insignificant have rapidly become so important as to constitute not only the theme of never-ending popular discussion, but also the issues which mainly divide the national political parties of the country. And as illustrating in some degree the nature and strength of what may be termed the motor or impelling influences which have forced these changes in public opinion, what can be more pertinent than the fact that the State of New York alone now annually raises

by taxation to meet the expenditures of State and local governments a sum (\$91,232,012 in 1890) more than one half in excess of the net ordinary expenditures of the Federal Government in 1860 (\$60,086,754).<sup>\*</sup> In this latter year the cost to the people of the United States for the maintenance of their national, State, and local governments was probably less than three dollars per capita. For the year 1890, an approximately correct estimate for like expenditures was \$13.65 per capita.

These questions and problems have not, however, come up simultaneously for consideration, but have been gradually evolved, as it were, from the changing condition of affairs, and somewhat in the following order: *First*, the national debt and its transition from a miscellaneous to a consolidated character; *second*, the readjustment of the war system of internal taxation; *third*, the question of currency, specie redemption, and legal tender—on which topics alone more than five hundred separate publications, books and pamphlets, exclusive of congressional speeches and newspaper articles, have been issued from the American press; *fourth*, the “Free Trade” and “Protection” question; *fifth*, the monetary metallic standard question; *sixth*, the relations of the State to common carriers, and the methods of internal intercommunication; *seventh*, the subject of local or State as contradistinguished from national or Federal taxation; on which latter topic, although it relates to methods by which the people of the United States at present annually contribute to local or State governments a sum nearly equal to the present total annual revenue of Great Britain from all imperial taxes, there had not been, up to 1870, a single publication in the United States apart from official reports that pretended intelligently to discuss it. Since this date, however, a much greater interest has been manifested on this subject. Several publications of great merit, exhibiting the situation in its legal aspects, and the theories, controversies, and experiences of the past, have appeared; † and

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<sup>\*</sup> The budget of the city of New York is at present [1899] upward of \$97,000,000 a year.

† Of such publications the following are specially worthy of notice: A Treatise on the Law of Taxation, including the Law of Local Assessment, by Thomas M. Cooley, one of the justices of

this interest has been especially intensified and popularized by the scheme of the so-called "single tax," which, if not originated by Mr. Henry George, has been so ably advocated by him as to have attracted, previous to the development of the silver problem, more of popular attention on both sides of the Atlantic than any other economic topic brought forward during the present century.

Some better acquaintance with the literature of taxation than has hitherto been acquired by most educated men would seem to be essential to a full understanding of many of the great events in the world's history, inasmuch as nearly all great political revolutions have been primarily occasioned by the exercise of arbitrary power in compelling contributions of property from the masses by those in authority. Thus, going back to ancient history, the disruption of the Jewish monarchy and the secession of the ten tribes were due to the refusal of the successor of Solomon to accede to the demands of their representatives that he should abate the (tax) exactions of the preceding reign; and to his threat in response that he would make his yoke even heavier in this particular than his father's. And the first significant act recorded of the revolt that followed was the stoning to death of the man Adoram, who "was over the tribute," or the chief of the tax collectors.\*

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the Supreme Court of Michigan, 1876; A Treatise on the Law of Taxation, as exercised by the Government of the United States, by W. M. Burroughs, 1877; The Law of Taxation, by Francis Hillard, 1875 (three publications in which questions of political economy, as not necessarily involved in discussion of legal points, have received little consideration); The Shifting and Incidence of Taxation, 1892 (second edition, 1899), Progressive Taxation in Theory and Practice, 1894, Essays on Taxation, 1895, by Prof. Edwin R. A. Seligman, of Columbia College, New York, three publications characterized by great historical research, and a repertory of information not otherwise readily accessible. Cohn's Science of Finance, a recent work of sufficient merit to warrant its translation from the German under the auspices of the University of Chicago, is nevertheless of such a character that it will never be generally read, or have the slightest influence on the mass of the people of a country like the United States, who select the legislators who determine what shall be the policy of their Government in respect not only of taxation but of all other fiscal or economic subjects.

\* Although Rehoboam was urged to make concessions to the

After the Persian war, the states of Greece, united under what was termed the confederation of Delos, agreed to make contributions—i. e., pay taxes—to Athens, to be used by her for the common defence; and these contributions, assessed in the first instance by Aristides, whose reputation for justice commanded the confidence of all, occasioned no complaint. But finally Athens, having assumed the direction of the confederacy, not only increased the contributions beyond the assessments of Aristides, but also assumed the right to use them arbitrarily, notably for fortifying and beautifying the city. The result was a revolt, followed by the Peloponnesian war, and from that date and occurrence the decline of Athens, and indeed of all the states of Greece, is traceable.

Oppressive taxation prompted the so-called massacre of the “Sicilian Vespers” in 1282, resulting in the slaughter or expulsion of all the French from the island of Sicily.

The assumption and exercise of authority on the part of Pope Leo X in 1517, to enforce contributions for the rebuilding of the cathedral of St. Peter’s at Rome was, as is well known, the primary cause of the disruption of the Roman Catholic Church, the Protestant secession led by Luther, and the almost innumerable wars and social disturbances that followed in consequence.

The history of the struggle of the people of England against arbitrary taxation is the history of the English Constitution. Thus, the attempt to arbitrarily collect an unjust poll tax was the primary cause of the rebellion of Wat Tyler in England in 1378, in the reign of Richard II; as was the “misuse of taxes” the occasion of the rising of the commons of England in the next century (1450) against the government of Henry VI, and under the leadership of Jack Cade.\*

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people, whose greatest grievance was the *corrée* and burdens imposed by Solomon’s court and great building operations at Jerusalem, he is reported to have said: “My little finger shall be thicker than my father’s loins. And now whereas my father did lade you with a heavy yoke, I will add to your yoke: my father hath chastised you with whips, but I will chastise you with scorpions.” The name Adoram, says Renan, became mythical to designate the overseer of forced labour.

\* Recent historical investigations favour the idea that the leader of this rebellion was not an illiterate rascal and buffoon—

Shakespeare, who apparently analyzed and comprehended the subtle philosophy of all human motives and tendencies, seems also in the play of Henry VIII to ascribe the fall of his great minister, Wolsey, to abuse of the power of taxation; and whether in this he was historically correct or not, his utterances respecting the effect of such abuse are as pertinent to-day as ever, and in some respects remarkably applicable to the depression that in recent years has come to one great department of the domestic industries of the United States through injudicious taxation of the crude material—wool—that constitutes its foundation:

“The subject’s grief  
Comes through commissions, which compel from each  
The sixth part of his substance, to be levied  
Without delay; . . . this makes bold mouths:  
Tongues spit their duties out; and it’s come to pass,  
This tractable obedience is a slave  
To each incensed will.”

“For, upon these taxations,  
The clothiers all, not able to maintain  
The many to them ’longing, have put off  
The spinsters, carders, fullers, weavers, who,  
Unfit for other life, compelled by hunger,  
And lack of other means, in desperate manner  
Daring the event to the teeth, are all in an uproar,  
And Danger serves among them.”

The great revolution in England (1642–1659), by which the constitutional rights of her people were finally established, wherein Charles I lost both his crown and his head, was caused by a question of taxation. And subsequently the attempt of Great Britain to tax her American colonies without their consent was also the primary cause of the American Revolution; \* while later the demonstrated in-

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one of “the filth and scum of Kent,” as portrayed by Shakespeare in Henry VI—but rather a gentleman of gentle and possibly of noble birth.

\* Recent historical investigations (by Professor Tyler) have shown that the demand “no taxation without representation,” which has been popularly regarded as one of the prime causes that contributed to the revolt of the British American colonies in 1775 and their subsequent independence, “did not mean that the colonies could not be lawfully taxed by Parliament when they had no representatives in Parliament. It was a demand applicable

ability of maintaining a harmonious and efficient government under the Articles of Confederation, which permitted the several States that were parties thereto to interfere with their mutual trade and commerce by multiple and conflicting systems of taxation, was one of the principal factors that led to the formation and adoption of the Federal Constitution.

It is also now generally admitted that to the cruel and extraordinary abuse of the power of taxation, more than to any other one agency, is attributable not only the French Revolution, but the extraordinary ferocity with which it was conducted.

No text in the New Testament has been so little understood for want of any recognition of its connection with the subject of taxation, as that one which declares that "it is easier for a camel to go through the eye of a needle than for a rich man to enter into the kingdom of God." By many theologians and secular advocates of social reform—the Russian Tolstoi being a recent notable example of the latter—it has been regarded as a disapproval of the attainment or accumulation of wealth, and has doubtless served as the basis for innumerable sermons on the "sin of riches"; when a little reflection and acquaintance with social economy would have led to the conclusion, as Buckle has clearly expressed it, "that of all the results which

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to the three orders of the English body politic—kings, lords, and commons—and meant that the commons could not be taxed when they were not represented. But the commons represented the cities of Leeds, Halifax, Manchester, Birmingham, and Liverpool in Parliament, although none of them had any vote or personal representation in it at the time of the American revolt or for a long time afterward. Indeed, only one tenth of the people of the United Kingdom had then any vote. The commons represented Massachusetts in the same way that they represented Manchester. That this was an unsatisfactory kind of representation will be admitted without argument, but it was not in contravention of the maxim quoted, which has come down to us as a legal justification for the war. It would have been strange indeed if the English Constitution had contained within itself a justification for breaking up the British Empire." The separation of the colonies from the mother country was therefore not a legal step, but an act of revolution, and suggests a remark attributed to Mr. Lincoln at the outbreak of our civil war, that "it was a constitutional procedure for overthrowing the Constitution." See *Literary History of the American Revolution*, by Moses Coit Tyler.



are produced among a people by their climate, food, and soil, the accumulation of wealth is the most important. For, although the progress of knowledge eventually accelerates the increase of wealth, it is nevertheless certain that in the first formation of society, wealth must accumulate before knowledge can begin, because without wealth there can be no taste or leisure for that acquisition of knowledge on which the progress of civilization depends." And surely a disapproval of this almost self-evident truth could not have been the intent of an inspired teacher. To understand the true meaning of this text it is necessary to go back and consider the time and circumstances under which the declaration it embodies was made. Judea at this period was a subjugated Roman province, and what the wisest and best men of Rome thought of the people of such provinces and of the right of Rome to grind down the nations that it had subjugated, is clearly shown by the following extract from the oration of Cicero against Verres, who was prosecuted for extortion when governor of the province of Sicily: "If," he said, "we have esteemed the revenues of the provinces as the nerves of the republic, we shall not hesitate to say that the order which raises them is the mainstay of the other orders. The provinces and countries subject to tribute are the lands of the Roman people. If Verres is guilty, it is not because of his rapacious exactions, but because he diverted them to his own use rather than to that of the republic." And as for the sufferings of the tributary people, he alludes to them for the necessities of his cause, but he regards them of so little importance that in his oration for Fonteius he exclaims: "Who are his accusers? Barbarians! Men who wear breeches and smocks! Can the most reputable of the Gauls be placed on a par with the least and most wretched of Roman citizens?" The Romans, in fact, regarded their provinces as valuable only to the extent that they could make them available for extorting tribute (taxes), and the most effective instrumentalities they could employ for this purpose were unpatriotic or renegade citizens of the provinces who understood the habits, pursuits, and amount and distribution of the property of their fellow-countrymen. These in the case of Judea were Romanized or apostate Jews, who, in accordance with the Roman custom,



were invested with a power, which they undoubtedly exercised, to administer torture in case it was found necessary to enforce payments from unwilling or impoverished subjects.

Again, as there was little industry at the time save agriculture, and markets were limited, there was little opportunity for a Jew to become rich, except by favour of the Romans and plunder of his people; and with these latter the publican or tax-gatherer and the rich man, who must have been often one and the same, became so abhorrent, that they naturally classified and placed them upon the same plane with notorious sinners and the most despised and degraded members of society—the harlots\*—for whom an entrance into the kingdom of heaven was regarded as an impossibility.

And in this connection it is pertinent to recall that Jesus visited the house of “a man named Zaccheus, which was the chief among the publicans, and he was rich.” . . . “And when they” (the people) “saw it they all murmured, saying that he was gone to be guest with a man that is a sinner. And Zaccheus stood and said unto the Lord: Behold, Lord, the half of my goods I give to the poor; and if I have taken anything from any man by false accusation, I restore him fourfold.” And evidently in consequence of this declaration, “Jesus said unto him, This day is salvation come to this house, forasmuch as he also is a son of Abraham” (and not a foreigner). “For the Son of man is come to seek and to save that which was lost” (i. e., the publicans).

In ancient Greece also there was a familiar proverb that used the term “publican” as synonymous with that of “robber”; and Tacitus, the Roman historian, in his description of the German people, regards them as fortunate in having no publicans to impoverish (*atterere*) them.

On the other hand, in the case of the Romans, who had little sensitiveness as to the manner in which public revenue or private wealth was attained, the publicans who collected the customs were held in high honour, and were

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\* “Verily, I say unto you, that the publicans and the harlots go into the kingdom of God before you.”—*S. Matthew, xxi, 31.*

“For John came unto you and ye believed him not; but the publicans and the harlots believed him.”—*S. Matthew, xxi, 32.*

characterized as the flower of the nobility (*"flos equitum Romanorum"*).

Another point of interest in connection with this immediate subject, and one which has been generally overlooked, is that the answer which Jesus gave to the Jews, who put to him the question, "Is it lawful to give tribute to Cæsar?"—namely, "Render unto Cæsar the things that are Cæsar's"—expresses a fundamental principle in political economy, in that it enjoins payment on the part of citizens or subjects of such tribute (taxes) as the government (typified by Cæsar) under which they live may lawfully be entitled to demand for its support; and at the same time withholds sanction from, and so by implication denies, the right of a government to take that to which it is not entitled (or which is not Cæsar's), which it does when it exacts tribute or taxes for any other purpose than its legitimate support, or, what is the same thing, for the benefit of individual or private interests. In other words, the answer recognises a broad line of distinction between the rights of Cæsar, or the government, and other rights in respect to property; and indicates that Cæsar, or a government, can find no justification, in virtue of power to compel the payment of tribute or taxes, to appropriate property (of the people) under circumstances in which similar action on the part of a private citizen would be considered robbery.

The casual observer would hardly imagine that there was any relation between anthropology (the science of man) and taxation; and yet writers on the laws of nations from an early period, and economists of a later day,\* have called attention to the circumstance that different races seem to possess different moral aptitudes for different forms of taxation. Thus it is claimed that in countries inhabited by the pure Germanic race, or its leading branches—in Germany, Scandinavia, Great Britain, and the United States—the desire and ability for self-government, and the disposition to place authority near to the individual or in his town or locality, favour voluntary taxation and a great endurance of burden in view of the

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\* Macchiavelli and other Italian publicists in the seventeenth century, and M. de Parieu, a French economist, in 1855.

attainment of a right result; whereas among the Latin races the tendency is to concentrate all authority, and generally in a military form, in the state, and require passive submission to the exercise of it on the part of the people. Hence, general taxes on property and income, which require for their successful application a certain degree of loyalty, of patience, and even of voluntary co-operation on the part of taxpayers, and which find favour among the former races, hardly exist among the latter. It is interesting also to note, in connection with this subject, that the restitution to the Government of what is termed "conscience money," which is of constant occurrence in Germany, Great Britain, and the United States, is said to be very inconsiderable or wholly lacking in the states of the Latin races.

The comparatively insignificant position which the subject of taxation holds in economic literature has already been pointed out. Its relation to general literature is similar, and perhaps even more remarkable. Since sin came into the world, there has probably been no one purely human agency more prolific of crime and human suffering and of temptation to do wrong than the multitude of arbitrary, impolitic, and absurd laws which have been enacted to unjustly exact from the people contributions of their labour and property under the name of taxation, and yet the utilization of these experiences by novelists and dramatic authors has been almost entirely restricted to the comparatively petty transactions of smugglers and the illicit producers of distilled spirits. Even the terrible tax incidents which preceded and in fact occasioned the great French Revolution, have not entered largely as an element into more than one or two works of fiction of acknowledged merit in the English language.\* As a field of morals also, this subject has been almost entirely ignored, and rarely entered upon by theologians; and yet under the tax laws of the United States, to say nothing of other countries, the practice of perjury is encouraged

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\* The only work of fiction of this character known to the writer is *Gabrielle André*, by S. Baring-Gould (D. Appleton & Co., New York, 1871), in which the conditions of taxation existing in France prior to the Revolution of 1788-'89 are instructively used as the basis of a historical story.

and tolerated to a degree that is utterly inconsistent with the existence of any high standard of public morality, or any rational religious belief.\* And so also in the department of history. How few of those who consider themselves well read and well informed, recognise that the terrible decadence of Spain up to 1808 is attributable more to the influence of a tax on sales (the *Alcavala*) than to any other one cause; and that, on the other hand, the great wealth and prosperity of Holland in the sixteenth, seventeenth, and eighteenth centuries, and the control of a commerce that made its ships the chief carriers and their ports the chief depots of the products of the world, were due mainly to a system of taxation that imposed the minimum of restriction on exchanges, domestic or foreign, and entailed the least friction upon its own people; while in all other and competitive countries the direct reverse of such a fiscal policy found favour and existed.

THE PLACE OF TAXATION IN HISTORY.—A clear and exhaustive statement of the world's experience in respect to what is called taxation would be almost equivalent to a universal history; and in default of this, a review of the most prominent features of such experience is the only alternative, and is capable of being made in the highest degree interesting and instructive.

While the farthest reach of history touches no period when government or the state has not appropriated for its maintenance or pleasure the property or services of its subjects or citizens, the present ideas respecting taxation are so essentially modern that little or no recognition of them

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\* On this topic a leading American clergyman writes as follows: "It is probably a good thing that clergymen have not preached numerous sermons on taxation, even on its moral and religious aspects. That they have hitherto been ignorant on the subject is not so much their fault as their misfortune, and being ignorant on the details of this matter they have not taken it as the theme of set discourses. But, judging by my own experience, they have preached on the application of moral principles to every department of life, and on the obligation of a man to be honest in his dealings with government no less than with individuals. That taxation has moral relations and qualities they have perceived and stated, and that probably was as far as their qualifications authorized them to proceed. Whether the present encyclopedic education will give us the more serviceable clergymen remains to be seen."

can be found in either ancient or mediæval history. In fact, no taxes, in the present ordinary sense of the term, were needed in ancient times to carry on government or public institutions. The monarch, king, chief, lord, or other sovereign of any particular district or country was generally the owner of all the landed property within his empire or domain; and the people who cultivated it were his villeins, serfs, or tenants. "The theory of English [and also of Chinese, it may be added] land tenures to-day is, that the original title is in the king, and that everybody who has an interest in land is a tenant. There is no such thing known in England, though it may be in some other countries, as an allodial title; that is, one which is absolute as to the ownership of the soil." All land in England is held mediately or immediately of the king, and there is no allodial tenure.\*

A sovereign who owned all the land of a country, and could at his will take any portion of the labour products of the people who cultivated or occupied it, obviously was exempt from the necessity of resorting to any other form of levy upon persons or property for the support of the state or for his pleasure; and this mode of appropriating property by the governing power has prevailed in almost every country of the Old World of which we have any fiscal record, at some period of its history. At the same time all history teaches that the actual administration of such governments has been very generally, and perhaps as a rule unnecessarily, oppressive by reason of the manner of collecting or exacting the tribute or contributions from the people, or by the spoliations of the officials to whom the business was intrusted. Throughout the Eastern world the general practice under its native princes has been, and even still is, for the tribute or tax collectors to pay themselves by peculations, and to extort from the cultivator

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\* Miller's Lectures on the Constitution of the United States, pp. 231, 232: "Out of this fact come many of the difficulties American students find in regard to the doctrines pertaining to estates and tenancies. Our laws have been freed from a large part of these intricacies and traditional requirements, which were the outgrowth of centuries of development among our English ancestors regarding the holding of land, but their influence still embarrasses our judicial system."

the utmost farthing that could be taken without compelling him to abandon his fields. Thus under the Sikh dynasty of India, which was founded by a petty chieftain on the ruins of the Mogul Empire at the close of the last century and continued until 1846, the custom was to take from the peasant the equivalent of six shillings out of every twelve shillings' value of his produce in the name of rent; but under the present British rule the government takes from the descendants of these same peasants only one or two shillings in the form of taxes. It is not necessary, however, to go to Eastern experiences for illustrations of how the burden of taxation can be made terribly oppressive by the method of taking, inasmuch as in 1598 (according to Sully \*), out of one hundred and fifty millions extorted from the taxpayers of France in that year, only thirty millions found their way into the public treasury. It is stated as a not infrequent occurrence that prior to the great Revolution of 1789, a duty was levied twenty-seven times on a barrel of wine in the course of its transportation from the place where it was grown to that where it was sold; so that it was said to be cheaper to send wine from China to France than from one of the departments of France to Paris.

It is also to be noted that in ancient times war, both in Eastern countries and in Europe, was almost the normal state of mankind, and victorious nations supported and enriched themselves from the plunder and tribute of the vanquished. The land especially of subjected people became the property of the conquerors, and payments in the nature of rents rather than taxes were exacted from its occupants and cultivators.

**TAXATION IN CHINA.**—A curious perpetuation in many respects of these ancient methods is yet to be found in the present system of raising funds for defraying the expenses of the Government in China, and concerning which little has been definitely known until within a very recent period. With the exception of certain limited grants held by Manchu princes in consideration of remote military services, all the land of the empire is regarded

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\* Memoirs of Sully; quoted by McCulloch in *Treatise on Taxation*, p. 30.

as the property of the emperor, and all original titles to land are held directly from him subject to three conditions: \* *First*, the payment of a land tax; *second*, the payment of fees when the crown title-holder or his successors sell mortgages, or leases; *third*, the supplying of certain labour service when demanded by the authorities. The land tax, which is exacted from all arable land, varies in amount according to the productiveness of the land, and does not ordinarily exceed one twentieth of the gross product. There is no tax on waste and uncultivated land, and rights in common exist in respect to waste land adjoining villages. The fees incident to the alienation of land are *nominally* about three per cent of the purchase money, but usually, by extortion, range from five to six per cent. The supplying of labour, when demanded by the authorities, is not well defined, and is apparently limited to furnishing the Government with transportation and labour on the public works, especially the repairing of dikes and canals. If these conditions are complied with, the state rarely interferes with the possession, alienation, or rental of land by its subjects. When land is rented the Government tax is paid by the landlord, and not by the tenant. The district magistrate is tax assessor, tax collector, judge, and administrator.

In China, where no part of the national income, except what is obtained from the foreign maritime customs, is collected directly by experts of the Imperial Government, the opportunities for speculation and oppression are many. All the collectors of the revenue, with the exception noted, are agents of the provincial governors, and responsible only to them. A Board of Revenue at Peking prepares the budget, and apportions the amount needed for the ensuing year, among the various treasuries and collectorates throughout the empire. After these demands have been satisfied any surplus revenue belongs to the provincial authorities, to be expended or retained, as seems best to them. As the demands from the emperor become larger,

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\* It is even asserted that there is at the present time but one person in all China who holds an absolute freehold title to any real estate, and he in virtue of being a lineal descendant of the Ming dynasty which the Manchus supplanted.



the rulers of the provinces become more exacting. There is never any decrease in taxation: the tendency is ever the other way. Remission of land taxes is made when any great calamities occur, as floods, famines, and fires, and in such cases the tenant shares in the remission. Hardly a year passes without considerable reductions being made on the plea of droughts or floods, and, when the returns of the crops show that the year is not one of plenty, the viceroy or commissioner need remit only eight tenths of the sum apportioned on his district. It has been estimated that the land tax should yield 138,000,000 taels a year, were it honestly collected. The actual returns to the imperial treasury from this tax are only 25,000,000 taels.

Another important item in the imperial revenues of China is the monopoly of salt. The importation of foreign salt is indicated by the treaties, and the prohibition is strictly enforced. While there is no restriction on the amount of salt made in the empire, all that is produced must be sold to the Government. Other sources of imperial revenue in China, apart from this monopoly, are from taxes on goods brought through the gates of towns and cities, which appear to be analogous to the European *octroi* taxes; from export and import duties, which are of modern origin; and from the sale of honours or titles.\* There appear to be no taxes on personal property in China; but in Peking, and probably in other cities, small license fees are required from certain occupations and manufactures, ostensibly for defraying municipal expenditures.

Owing to the increasing absorption by the imperial Government of provincial revenues, the seaboard provinces resort more to inland duties, which are so high and numerous as to impede trade. The privilege of "transit passes" was intended to reduce and regulate the inland dues, as well as to transfer revenue from the provincial into the imperial treasury. The result is not satisfactory, largely through the continuous struggle between the local head and the emperor to secure the benefit. Likin was

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\* The *customs* revenue of China for the year 1893 was reported as £3,646,350 (or \$18,331,750), of which fully one third was derived from the duties on opium. The average rate of duties on other importations was about six per centum of their entered valuation,



originally regarded as an illegal exaction, but is now authorized by imperial decree. In its present shape it first appeared about 1853, became universal after the Taiping rebellion, 1860-'61, and is now based upon a notification of 1865. It is asserted that the whole of the likin is borne by the trade of the Yangtse and Canton Rivers on the likin barriers. An English expert, Mr. Jamieson, writes: "Their numbers and frequency depend on the amount of the trade and the extent to which it will stand taxing without being absolutely strangled. In some places, as along the lower parts of the Grand Canal, the barriers follow one another at intervals of twenty miles or so. In other places, where trade is scanty and the barriers can be turned by detours, there are few, if any. A tariff is arranged, and is supposed to be published for general information, but nothing is more difficult than to get accurate information either from the merchants or officials on this point. In point of fact, neither party seems to pay much attention to the authorized tariff. Nearly all boats are passed by a system of bargaining, the officials ask so much, the merchant makes a bid, and they haggle till they come to terms."

Likin is a duty on merchandise in transit, and the transit pass was to make that duty unnecessary. To neutralize this concession a tax called "loti shui" has been devised, and may be either a terminal tax, collected on the goods in their final market, or a growers' tax, levied on the land or produce before the latter has reached the foreign merchant, who could claim the protection of a transit pass. "It further appears that the likin is being extended to industrial works directly and apart from taxation of the produce. It recently came under my notice that a fee of two hundred taels was paid to the likin office for a license to open a new brick factory, and for some time the silk weavers in Soochow have been paying a small monthly levy per loom as likin. An attempt to increase it produced a riot. There is in fact no branch of the national industry, apparently, to which this tax may not be applied—the only limit being the fear of a riot." \*

The imperial revenue of China is believed to be about

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\* See a report made in 1896 by H. B. M. consul, Mr. Jamieson, on the revenue and expenditure of the Chinese Empire.

85,000,000 taels, or, taking the value of the *haikwan* or customs tael for 1896, \$68,850,000 per annum, although the sum actually collected is probably much greater, the part that is unaccounted for being absorbed in the taking by the prominent officials. Under any circumstances, however, the great mass of the people of China are not heavily taxed; and their system of administration, except as it concerns the transit of foreign imports and exports, has few inquisitorial and annoying features; and to the absence of these the permanency of the Chinese Government for so long a period, and the tranquility and contentment of the Chinese people may, in a great degree, be attributed.

**TAXATION IN JAPAN.**—Another example of an ancient system of taxation, which until a recent period has been subjected to very little change, is to be found in the case of Japan. In this country, as in China, the system of taxation is now, as it always has been, essentially a land tax, but greatly modified in recent years to conform to modern conditions. During the feudal period in Japan, taxes were for the most part paid in kind by the cultivators of the soil, and were in fact a form of rent due to the lord of the soil. Under the oldest *régime*, when the emperor was the real as well as the nominal head of the government, the land was divided into nine squares, the central one of which was cultivated by the holders of the other eight, for the use of the emperor, who thus received one ninth part of the total product of the soil. During the fifteenth century, when the military chieftains—the daimios or Shoguns—had gradually usurped the real power of the emperor, a much larger proportion of the produce of the land was exacted; seldom less than four tenths of the total crop, and sometimes as much as two thirds. The staple food of the country being rice, the taxes were almost invariably collected in that commodity. The amount paid, however, was not fixed by any national measure, but varied from province to province, depending on local customs, the humor of the daimio, or other circumstances. Moreover, as the established policy of the ancient feudal government was to preserve and fix the status of all classes and conditions of men, it laid down a multitude of vexatious and arbitrary rules regulating every kind of production, which in turn prevented everything in the way of independent

action and progress on the part of the producers. Thus, the Japanese farmer without government permission could neither increase nor decrease the amount of his cultivated land; nor could he change from the cultivation of rice requiring a wet or marshy soil to some other agricultural product requiring a drier soil. In short, all the conditions of land cultivation were so carefully prescribed that the farmer had nothing to do but follow a routine that deviated little from generation to generation. Under such a condition of things, especially under such a system of land tenure and taxation, population obviously could not, and in fact did not, increase either in wealth or numbers; and taken in connection with the circumstance that each of the many daimios or feudal lords maintained great retinues of wholly unproductive retainers, we find an explanation of the fact that Japan continued a poor country with a very slowly increasing population even in times of profound peace. During the century and a quarter from 1721 to 1846, the increase is reported by Japanese authorities to have not been in excess of five per cent.\*

After the restoration in 1873 of the authority of the emperor, and the abrogation of the daimio system or lordship, a radical change was made in Japan, not only in the general status of the farmer, but in the conditions under

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\* According to a paper read by Professor Droppers before the Asiatic Society in Tokio, June, 1894, this period was a time of only measurably suppressed anarchy and lawlessness. It was two hundred and fifty years of armed truce. It was one large dance to death. Famines were frequent and dreadful. Having no railroads or steamships, and having, in their eagerness to shut out foreigners and keep in their own people, destroyed all sea-going ships, they had no water transportation except by means of wretched junks. Millions upon millions died of hunger. To this day, around the cremation houses of certain inland cities there are acres of heaps of human bones mixed with ashes, the awful witnesses to the might of famine, when hundreds of bodies were burned daily to prevent pestilence. Child murder and exposure were in some provinces so common that the question which neighbours would ask of a father, whether he intended to raise the newborn baby or not, was as proper as it was usual. It is estimated by medical men that fifty per cent of the people died of smallpox. Syphilis was almost a national disease. Disease, immorality only partly suppressed, anarchy, famine, social and economical antagonisms, cramped Japan as in bands of iron,

which he cultivated the soil and paid his taxes. All the previous iron rules imposed upon him were abolished; he was given perfect liberty to buy and sell land or adopt new modes of cultivation. The system of payment in kind to each provincial lord was replaced by a national land tax paid in money. The value of every piece of cultivated land was appraised according to a complex and somewhat arbitrary method of valuation, and on this capitalized value three per cent was imposed, in addition to a Government tax of one per cent for local purposes. In 1876 a decree was issued reducing the general tax to two and a half per cent, and the local tax to one half of one per cent. At the same time, with a view to supplement this reduction of local taxation and increase the national revenues, taxes were imposed on spirits and tobacco, on sales (at varying rates), on contracts, receipts, land transfers, petitions (through the agency of stamps), on some professions and mechanical pursuits, and on the ownership and use of ships, boats, and vehicles. The land taxes, however, contribute the largest amount of revenue to the national treasury, furnishing about seventy per cent of its receipts, exclusive of the local land taxes; and in many districts of Japan the total amount yielded by the farmer to the Government, national and local, was estimated in 1891 at even more than fifty per cent of his crop.\*

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\* "This statement, however, gives no indication of the true condition of the Japanese farmer. In this country, where the Government performs so many functions which in America are left to the individual, a high rate of taxation is not necessarily an indication of poverty or of a low standard of living. With a sufficiency of land and a variety of crops, even the Japanese farmer can live comfortably, especially if a good fraction of his land is dry field (*hata*) on which he generally raises two crops a year. Very few of the farmers of Japan, however, are in this condition of tolerable comfort. The amount of the cultivated land of the empire is so small (less than twelve per cent of the whole area) and the population so large (over forty millions) that the land belonging to each family is absurdly insufficient. The average holding is less than two acres, subdivided into smaller parcels, which vary in size in different provinces, but average nearly one eighth of an acre each. Thus, to picture a typical Japanese farm, one must imagine a piece of land less than two acres, cut up into about fourteen pieces, or bits, each separated from the other by a raised path of earth. Even then the picture is incomplete, since the bits belonging to one farmer are not necessarily adjacent to

Very curiously, the responsibility for the existence and continuance of this extraordinary system of land taxation in Japan, which finds no parallel in any other country, and the incidence of which constitutes such a burden on the mass of its population, has until a very recent period rested with foreign nations rather than the Japanese Government, and in this wise: When treaties were first made by foreign nations with Japan, after the opening of its ports and the abandonment of its old-time system of non-intercourse with the rest of the world, it was assumed on the part of the former that the Government and people of Japan were in a semi-barbarous condition, and ought to be treated as such in all political and commercial negotiations; and that in respect to trade and commerce the greatest advantage should be taken of the weaker nation that circumstances would permit. The leading nations of Europe and the United States accordingly stipulated, in their treaties with Japan, that it should not impose any duties on exports or imports in excess of five per cent; and the receipts from customs being thus arbitrarily made insignificant, and those from such other sources as spirits, tobacco, licenses, and the like being normally inadequate, the Government of Japan has been compelled to resort to the old feudal system of taxation as the only practical way of obtaining revenue to defray its necessary expenditures.\*

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each other, but frequently many a rood apart. Such a beggarly amount of land, even under the most perfect system of cultivation, can not of course yield sufficient to bring up a family according to Western standards of comfort. The idea of wages, or remuneration for labour, scarcely enters the Japanese farmer's mind; he is content if, after paying his taxes, he can in some rough fashion merely make both ends meet. At any fair rate of wages, farming is carried on at a loss in Japan. The farmer seldom eats the rice he grows, generally using barley or millet as a cheaper means of subsistence. His expenditures are on an infinitesimal scale; the clothes of the family are often heirlooms handed down from generation to generation; and as for saving anything from year to year, the practice is so little known in this country as hardly to be considered a virtue."—*Correspondence New York Nation*, 1891.

\* Recent treaties (1894) have in a degree abrogated the disabilities which foreign nations imposed on Japan at the time of the abandonment of its policy of non-intercourse with the rest of the world, but a denial of the right of Japan exclusively to regulate its taxes (duties) on imports is still maintained.

But, notwithstanding this, the results that have followed the fall of feudalism in Japan in 1868 are in the highest degree interesting, and constitute an important contribution to the history of civilization. Between 1871 and 1893 the population increased eight millions, railways and steamers have annihilated famine, old epidemics have become rare, the severity of old criminal law has been greatly mitigated, while liberty has encouraged the people to a wonderful activity and progress.

## CHAPTER III.

### GREECE AND ROME.

**TAXATION IN ANCIENT GREECE.**—In Athens, according to Boeckh, the revenues of the state were derived from receipts from the public domains, including mines, partly from taxes analogous to our “customs” and “excise,” and some taxes upon industry and persons which only extended to aliens and slaves; from fines and justice fees, from the proceeds of confiscated property, and from tribute from allied or subject states. All the exports and imports of Athens, at one period, were subject to a small duty of two per cent; and in addition to this, foreign ships lying in the harbour paid a small fee, as did also aliens for the privilege of selling commodities, arriving by sea, in certain designated market places. “A special tax was also levied upon the proprietors or occupants of houses, the doors or windows of which opened outward on the public footway. And, as throwing further light on the social system of ancient Greece, we have the statement on good authority that the Greeks, having no pockets, used to leave valuable articles in sealed packets, trusting to the laws which punished the violation of a seal. Direct taxes,” according to Boeckh, “imposed upon the soil, upon industry, or upon persons, excepting in cases of emergency, were looked upon in Greece as despotic and arbitrary; it being considered as a necessary element of freedom that the property of a citizen, as well as his occupation, should be exempt from all taxation, except when a free community taxed itself, which, however, is obviously an essential part of liberty.” Poll taxes were exacted by the Athenian state, but as such taxes were considered ignominious and as implying subjugation, they were only assessed upon slaves or subjugated foreigners; and failure to pay was regarded in the light of a capital offence.

The income of Athens from fines appears to have been considerable, and to have constituted a singular and permanent feature of the fiscal policy of the state. Its method of assessment may be best illustrated by examples. Thus, if duly authorized officials did not hold certain assemblages, according to rule, or properly conduct the appointed business, they had each to pay a thousand drachmas (\$200). If an orator conducted himself indecorously in a public assembly, he could be fined fifty drachmas (ten dollars) for each offence, which might be raised to a higher sum at the pleasure of the people. A woman conducting herself improperly in the streets paid a similar penalty. If a woman went to Eleusis in a carriage, she subjected herself to a fine of a talent (\$1,180). In the case of wealthy or notable persons, fines for omissions or commissions in respect to conduct were made much greater, and so more productive of revenue; and there were very few notable or wealthy citizens of Athens who under the rule of demagogues, and through specious accusations of offences against the state or the gods, escaped the payment of heavy fines; the experiences of Miltiades, Themistocles, Aristides, Demosthenes, Pericles, Cleon, and Timotheus being cases in point.\* Every person who failed to pay a fine owing to

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\* It was probably the contemplation of this state of things that led her great philosopher Aristotle to the conclusion, expressed in his essay on Politics, that "the rule of an irresponsible majority can be just as despotic as that of a single tyrant." He defines this extreme democracy as that "in which the majority, and not the law, is supreme"—in other words, "when decrees of the people, and not the law, govern." By "law" is meant a fixed code of statutes, which can not be changed or repealed by the ordinary legislative power. The latter can pass only decrees in conformity to the fixed code, which thus corresponds to our written constitutions. Such absolute power, he says, makes the people a monarch, and finally a despot refusing to be subject to law; and "such a democracy is analogous to tyranny." Both have the same character, for "both exercise a slaveholder's rule over the better citizens." In one we have decrees, in the other edicts; in one demagogues are in authority, in the other flatterers. When a dispute arises, the cry always is, "The people must settle it," and everything is determined by the momentary will of the supreme multitude. From this state of things the wisdom of our fathers has saved us, and the Supreme Court of the United States, as a rule, decides questions of constitutional law with far more wisdom and dignity than its predecessor, the popular court of Athens.



the state was reckoned as a public debtor, and was subject to imprisonment and a practical denial of citizenship; Miltiades, the victor at Marathon, for example, having been cast into prison (where he afterward died) through an inability to pay a fine assessed against him of fifty talents.\*

Another curious feature of the fiscal policy of Athens was an indirect augmentation of the public revenues, by diminishing the public expenditures through an institution which was essentially one of differential exaction (mis-called taxation), and was known as "liturgies." They consisted in the conferring upon ambitious and wealthy citizens certain honorary public offices to which nothing of salary or compensation was attached, but which entailed large expenditures for the entertainment of the people or defence of the country. The acceptance of these offices was compulsory; parsimony in expenditure on the part of the holder exposed him to public censure; and the institution undoubtedly found favour with the masses as a method of dividing the property or consuming the incomes of the wealthy. The system of liturgies was not, however, peculiar or restricted to the Athenian state. It existed in the Greek cities of Asia Minor, and also to a certain extent in Rome, where the persons accepting the office of *ædile*, whose business it was to take care of public edifices and superintend public festivals, were expected to appropriate large sums from their private resources for the convenience and amusement of the people. The office of *ædile* in Rome, which was one of great honour, was thus only made accessible to the very wealthy. But as the office was, however, in the direct line of preferment to some lucrative office in the provinces, the expenditures of its occupant were probably regarded in the light of an investment, from which more than complete remuneration was to be expected in the future.† The principle involved in the liturgies would also seem to find recognition and exemplification in modern times, and under a different civilization, but in accordance with the same human nature; as, for example, in Great Britain, which, by requiring members of Parliament to serve gratuitously, virtually restricts membership

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\* Boeckh's *Public Economy of Athens*, vol. ii, pp. 105-118.

† Boeckh, vol. ii, pp. 199 *et seq.*

Under the system of taxation established by Augustus and extended by his successors, most of the taxes known to modern times were anticipated by the Romans. Apart from the taxes on land, they had export and import taxes; tolls for passage over bridges; a tax upon salt; a tax in kind upon corn (wheat), barley, wine, oil, meat, and wood; a tax upon the value of manumitted slaves; on sales; and a capitation or poll tax. Of other notable and peculiar Roman taxes was one on the wages of prostitutes; and apart from his wars with the Jews and the building of the Colosseum, the Roman Emperor Vespasian is best known in history as the originator of a tax on urinals.

Excepting possibly the land tax, there does not appear to have been any general and uniform system of taxation for the whole empire. The taxes on imports and exports were not uniform, and there were separate customs districts, each with a tariff of its own, and some with special immunities. Under the reign of Augustus and his successors, duties varying from an eighth to the fortieth part of the value of the commodity were imposed at Rome on every kind of merchandise, "which through a thousand channels flowed to the great centre of opulence and luxury; and in whatsoever manner the law was expressed, it was the Roman purchaser and not the provincial merchant that paid the tax." \*

A general tax (characterized by Gibbon as an excise), seldom exceeding one per cent, was also exacted at Rome on whatever "was sold in the market place, or by public auction, from the most considerable purchase of land and houses to those minute objects which can only derive a value from their infinite multitude and daily consumption." As exports were subject to Roman taxation as well as imports, and as the average rates imposed in both cases were probably low, these forms of taxation appear to have been in the nature of a payment for the privilege of conducting commerce; imposed for the purpose of revenue only, and without the slightest reference to any contingent influences on trade or industry. In fact, the idea of promoting (protecting) industry through taxes on

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\* Gibbon, vol. i, p. 190, who in turn cites Tacitus, *Annals*, vol. xiii, p. 31, as authority.

exchanges appears to have found little place in Roman or any other ancient economic history or experience.

In accordance with a practice on the part of the ancient Romans of deifying abstractions—as war, love, navigation, thievery, and the like—we find mention of the Genius of the Custom House, or of Indirect Taxes (*genius portorii publici*), a divinity that seems to have survived to our own times; inasmuch as many of the curious phenomena that have occurred in connection with modern efforts to prevent free exchanges through the agencies of customs taxation, seem only capable of explanation on the assumption that some occult power has been more potential in shaping economic events in this department of government than any proper exercise of man's reasoning faculties; and that it is the part of wisdom that large sacrifices should be made by the people in order to propitiate this deity.

Throughout the whole course of their history the principal taxes levied by the Romans appear to have been collected through the instrumentality of a class of officials known as "*publicans*," who paid the government for the privilege of so doing; and who, intrusted with extraordinary powers, were allowed, by way of compensation for their services, to collect and retain as much of additional revenue as they could force or extort from the taxpayers for their individual and private benefit. Such an administration of the publicans necessarily involved and required the employment of a large number of subcontractors and deputies, who, stationed at seaports, on public highways, at the gates of cities, and the market places, examined all goods exported, imported, or offered for sale, estimated their value, and collected the taxes to which they were legally liable, and as much more as they could extort with impunity, for the benefit of their masters or themselves—which last, in disorderly times and under the bad emperors, had a very wide latitude. This wretched system of "farming" or discounting the revenues of the state, which appears to have been a permanent feature of the government of Rome at all periods—under its kings, under the republic, and under the empire—has, moreover, a feature of general interest, as it clearly illustrates the exceeding limitation and narrowness of the general Roman policy in the sphere of civil administration.

Another fact pertinent to the general philosophy of taxation, which the historical study of Roman polity has developed, is also especially worthy of notice in this connection. As has been previously stated, the Romans, for a period of at least one hundred and twenty-five years before the establishment of the empire under Cæsar, were enabled, through the great spoils of war obtained from subjugated nations, to relieve themselves from taxation for the support of their government; and, in so doing, it appears that they first threw off their direct taxes, and at a later period those taxes that were indirect. But when under Cæsar it became necessary to reimpose taxes, they established them in a reverse order—that is, the indirect taxes were renewed first and in preference to those which were direct; thus recognising and affirming in practice the idea that characterizes the fiscal policy of most modern governments—namely, that it is expedient to conceal as far as possible the burden of taxes from the people who are to pay them.

The gross amount of annual revenue which the empire of Rome collected in its best day is estimated by Gibbon to have been about twenty million pounds sterling (\$100,000,000); later authorities place it at a much higher figure, or \$200,000,000. In default, however, of exact information as to the purchasing power of money at the time, it is obvious that neither of these estimates can give us any true idea of the real amount of the Roman revenue; but, taking the probable price of wheat in Rome at the close of the republic as an indication of the price of other commodities, the purchasing power of Gibbon's twenty million pounds sterling (\$100,000,000) must have represented a much greater sum, or at least \$150,000,000. If the largest of these estimates of the revenue of imperial Rome should seem inadequate for the support of a government that extended over the greater part of the then known surface of the earth, that included a population of at least 150,000,000, and maintained a military and naval establishment of 450,000 men, it should be remembered that, apart from the greater increased purchasing power of money that now prevails, the expenditure by the state for the support of its military forces was comparatively small ("the ratio of military draft upon society before the inception

of Rome's decadence being but little more than one third as great as that of the seven principal states of present Europe" \*); that the present complexity and magnitude of expenditure in the form of taxes did not exist; and that a Roman national debt, with its burden of constantly accruing interest—the one thing most grievous to modern states—was entirely unknown.

The taxes, or rather exactions, on the people of the conquered provinces of Rome were always more numerous, discriminating, and onerous than those levied upon the population of the imperial city and its adjoining districts; and from the time of the Emperor Diocletian they became more and more destructive of industry, and fell with special weight upon agriculture. According to Sir James Stephen, the land tax in Gaul rose to "the almost incredible amount of one third of the net produce of the land"; but what is more singular and incredible, the present tax on the peasant agriculturist of Italy is, in some cases, equivalent to the value of an even larger share of his product.

The provincial taxes which gave rise, however, to the greatest discontent were the poll tax and a tax upon funerals. These were easy to collect, and consequently in favour with the Roman tax-gatherers; but being levied at fixed and indiscriminating rates, pressed with great and unequal severity upon the poor. The last-mentioned tax—i. e., upon funerals, which required payment before the burial of the dead—was said to have formed one of the principal causes of the revolt of the Iceni (Britons), under their famous warrior, Queen Boadicea. The decree mentioned in St. Luke's Gospel, of Cæsar Augustus, that all the world should be taxed, and in pursuance of which "every one went into his own city," unquestionably referred to a poll-tax assessment, and to its required payment in person by every adult at the Roman tax-collector's office nearest to an established centre of Roman authority.†

In the province of Gaul the annual tribute exacted from every head under the reign of Constantine was reported to have been twenty-five pieces of gold. But the possibility

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\* Baker, *The Grandeur and Decadence of the Romans*. D. Appleton & Co., 1894.

† Luke, ii, 1.

of the payment of such a high capitation tax has been explained by the circumstance that in all the provinces of the Roman world the majority of the people were slaves, or peasants whose condition was little different from slavery; and that the rolls of tribute embraced only the names of citizens who possessed the means of an honourable or at least of a decent subsistence.

The whole record of Roman experience in respect to revenue collection or taxation before the decadence of the empire, alike in the city of Rome and in her provinces, is, however, of no value, save from an historical point of view. It does not appear, as before noted, to have been based upon any well-devised and harmonious fiscal system, or to have had any influence whatever in originating or developing one; for, unlike other Roman customs and institutions, it everywhere fell into disuse when the authority of Rome was withdrawn. In one feature alone was Rome consistent in her views and harmonious in her practice in respect to taxation: she always levied taxes for the purpose of getting money into the public treasury and for no ulterior reason. The nearest approach on the part of the Romans to a recognition of the policy of stimulating a branch of industry through the instrumentality of bounties or subsidies seems to have occurred in connection with the distribution of wheat gratuitously, or at artificially low prices, among the poor and idle masses of the imperial city; which practice, originally adopted under the republic, with a view of obviating popular discontent, and continued, with additions of oil and meat under the empire, finally became a cause of great anxiety to the emperors lest anything should interfere with the movement of grain, which was mainly by sea from Africa and Sicily. To insure regularity and efficient service, the state at first farmed out the right to transport the crops to certain wealthy individuals; and this inducement to enterprise proving insufficient, the Emperor Claudius gave a bounty for each successful trip of the grain fleet. The construction of ships was also encouraged by subsidies, and in this way there grew up a class of wealthy shipowners, whose profits and incentive to business were obtained from the state, and who by organization into an association (analogous to the modern trust) under the name of "*Naviculari*," with branches in every city or town

in the provinces, and with wealthy and influential senators among its stockholders or patrons, attained to great prominence and influence in the third and fourth centuries.

Taxation, in at least one notable instance, was also employed by the Romans as an instrumentality for the correction of a social evil—namely, a disinclination on the part of wealthy citizens, in the latter days of the republic and throughout the whole period of the empire, to contract marriages, with a view of avoiding the cares and burdens of a family. To counteract this tendency, a tax (“*æs uxorium*”) was imposed on bachelors, with a limitation (“*lex Julia et Papia Poppæa*”) on the transmission of property by will or gift by the unmarried and the childless.\*

The statesmen and administrators of Rome seem never to have given a thought to the desirability of encouraging industry, trade, or commerce among their own people, much less among the people they had subjugated. There was, throughout all their literature and laws, the contempt which brigands and barbarians entertain for honest industry at least when that industry is not agricultural. To create wealth appeared to them sordid; to take it was admirable, or, as M. Blanqui has put it, the economic policy of the Roman state may be expressed in the following single sentence, “*Les romains voulaient avant tout consommer sans produire.*” †

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\* In the seventeenth and eighteenth centuries there was well-nigh universal legislation of this kind, the most thoroughgoing specimens being a Spanish edict of 1623 and one of Louis XIV in 1666, which not only granted exemption from taxation, but positive subsidies in cash, as an inducement to early marriages. That the idea involved in such legislation has also found favour at the present time is shown by the fact that Professor Richet, a German economist of repute, has recently proposed that in all systems of taxation the fathers of large families be favoured, and that corresponding burdens be laid on those who contumaciously refrain from marrying; ignoring the fact that old Rome adopted and carried out this policy by measures much more drastic than the spirit of the present times would tolerate, and that the result is generally believed to have been a failure. It is also worthy of note that at the present time, in the Canadian Province of Quebec, the fathers of the largest families receive bounties of public lands; the motive of which policy is unquestionably to bring the French Canadian element into the control of the Dominion Government.

† See Blanqui, *Histoire de l'Economie Politique en Europe*. American translation by Emily J. Leonard. New York, 1880.



The genius of the Roman government was military, not commercial. The Romans prohibited commerce to persons of rank and fortune; and no senator was allowed to own a vessel larger than a boat sufficient to carry his own food (grain) and fruit. They encouraged corn merchants to import provisions from Sicily, Africa, and Spain, because the cultivators of the soil of Italy, mainly slaves, did not produce a sufficient supply of food for the city of Rome. They seem, moreover, never to have had any conception of the impolicy of levying taxes in such a way as to dry up the channels of trade and enterprise; or of the fact, abundantly substantiated by all experience, that when government takes from its people more than a fair share of the savings of capital and labour, then accumulation will cease and capital be destroyed; and against social disorders thus engendered Rome was powerless. That the seeds of decay were thus planted in her governmental system, and that the fall of her empire was hence only a question of time and inevitable, is a point that historians seem very generally to have overlooked.

During the years of the later empire, although its resources and population had greatly decreased, its expenditures enormously increased; and the sequence of this was a system of grinding exactions, to which, more than any other one *immediate* cause, the utter decay and final complete downfall of the empire may be attributed. During the period intervening between the reign of Marcus Aurelius and Diocletian it has been estimated that a majority of the population of the empire, from Persia to Gaul, had died of the plague; and what the plague had been to the population, the "*fiscus*" or financial policy of the government was to industry. Under Constantius, A. D. 337, taxes were imposed on all trades and industries, and such was the comprehension and severity of the law, Gibbon tells us, that "the honourable merchant, the usurer who derived from the interest of money a silent and ignominious profit, the ingenious manufacturer, the diligent mechanic, and even the obscure retailer of a sequestered village, and the public prostitutes," were all alike obliged to admit the officers of the revenue to a participation of their gains. Such, moreover, was the imperfect state of agriculture and of manufacturing processes that the net



product of the individual was necessarily very small—so much so that it has been estimated that the labour of several individuals was required to supply even the necessary food of one inactive person. But as the people became exhausted, the demands of the government, contingent on the maintenance of an extravagant court and a large standing army of soldiers and officials, became greater, the severity in the methods of exaction increased, and in no two provinces was the authority of the government (sovereign) exercised in the same manner.\* With malignant ingenuity, and with a view of perfecting the control of the state over the individual, and doubtless more especially for facilitating the operation of the officials charged with the duty of collecting taxes, every man's position was fixed for him by the conditions of his birth. The son of a cultivator of the soil was chained, as it were, to the lands tilled by his father. The workmen in all other departments of industry were bound to their position for life, and when they died their places were taken by their sons. "If any one of them deserted his work, he was sought out, even to the remotest provinces, and ruthlessly dragged back to his post."† If he failed to produce a prescribed result, the state intervened and forced its accomplishment. In making assessments for taxation, visible tangible property was enrolled with great minuteness by officers who corresponded to our modern assessors. The lands were measured by surveyors; their nature—whether arable or pasture, vineyards or woods—was distinctly reported; and an estimate was made of their value from their average produce for five years. Every new purchaser of land contracted all the obligations of former proprietors. Slaves and cattle were counted separately, and carefully reported for assessment; and by the Theodosian Code, which for the time was an almost universal law, death and confiscation of estate was the

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\* Alfred Rambaud, *L'Empire Grec au Dixième Siècle*. Paris, 1870.

† By a law of the Emperor Theodosius, in 438 A. D., it was provided that the *fabricenses* (meaning thereby the workmen engaged in the fabrication of arms) "shall be so closely bound to their appropriate duties that, worn out at last by their toil, they shall die in the profession to which they were born—both they and their children after them."—*Code Theod.*, ii, 9, 4.

punishment to which every farming proprietor was liable who should attempt to evade taxation.

In respect to the assessment and collection of taxes on personal property, the accounts that have come down to us are most interesting, and ought to be full of instruction to legislators of the present day who believe in patterning tax administration after old and vicious experiences, so far as the changed conditions and ideas of civilization in the nineteenth century will admit. The proprietor of such property was, in the first instance, questioned under oath; and every attempt to prevaricate or elude the intentions of the legislator was punishable as a capital crime, and was held to include the double guilt of treason and sacrilege. If the results of personal interrogation under oath were not satisfactory to the tax officials, they were empowered to administer torture; and when personal stoicism or absolute incapacity failed to effect the desired results, resort was had to other, most abhorrent, and unnatural methods for procuring the sum at which their property was assessed—"the faithful slave being tortured for evidence against his master, the wife to depose against her husband, and the son against his sire. Neither age nor sickness exempted from liability and personal inquisition. In taking ages, they added to the years of children and subtracted from those of the elderly. When the number of cattle fell off and the people died, the survivors were obliged to pay the assessments on the dead." Zosimus, a historian who wrote in the early part of the fifth century, says that the approach of the fatal period when the general tax upon industry was to be collected "was announced by the tears and terrors of the citizens."

That the result, so far as the execution of the law was concerned, was a success, can not be doubted; nor that by the methods employed large amounts of revenue were collected that otherwise could not have been obtained. But what were the final results? First, a demonstration of an economic truth, which in subsequent years has over and over again been repeated, that the productiveness of a tax is not its first consideration; and that a blight contingent on the method of assessing and collecting a tax may ruin a harvest which it can not gather. Under the state of things, as described, that prevailed under the latter days

of the Roman Empire, the agriculture of its provinces was gradually ruined. Long before the footsteps of the barbarians had been seen in Italy, a large part of what had been its most fertile portion and the seat of "the delicious retirement of the citizens of Rome," had become uncultivated and a desert. "The desire and possibility of accumulation languished, and men produced only what would suffice for their immediate needs; for the government laid in wait for all savings. Capital vanished, the souls of men were palsied; population fled from what was called civilization, and sought concealment and relief in barbarism and with barbarians. Men cried for social death, and invited the coming of savages; and in the form of Goths and Vandals, Huns and Heruli, Franks and Lombards, they came, and the empire of Rome and its degraded civilization went down in almost universal turmoil, bloodshed, robbery, and woe." There is also good reason for believing that the Turks were greatly indebted for their success in overthrowing the subsequent Byzantine or Greek Empire to their simple methods and policy in respect to taxation; and that the subjects of the empire were glad to change their masters, because instead of multiplied, intricate, and vexatious taxes, the legacy of old Rome, they found themselves subject to a simple tribute, easily collected and easily paid.\*

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\* The most available source of information on this subject is the historian Gibbon (*Decline and Fall of the Roman Empire*, edition with notes by Milman, Guizot, and Smith; New York, Harper's), who in turn specially cites as the authority for his statements the two collections of ancient laws designated by the names of the two Byzantine emperors under whom they were made, as the *Codex Theodosianus* and *Codex Justinianus*, and the writings of Zosimus, a Greek historian, who lived in the early part of the fifth century A. D., and whose history of the Roman Empire is still extant. For an exceedingly graphic account of Roman experiences in attempting to tax personal property (from which quotations have here been made) see *Roman Imperialism*, in *Lectures and Essays*, by J. R. Seeley, London, 1870.

## CHAPTER IV.

### TAXATION IN THE MIDDLE AGES.

WITH the termination of the Roman Empire of the West, which is regarded as having taken place A. D. 476, when Odoacer, chief of the Germanic tribe Heruli, captured the city and assumed the title of King of Italy, a new and great element was introduced into European life, through the intermingling of the northern barbarians with the civilized, Christianized, and degraded Romans of the south. The following period, for at least five hundred years, was characterized, to an extent never before surpassed in the world's history, by bloodshed, license, licentiousness, turmoil, robbery, and woe. Franks, Burgundians, Visigoths, Saxons, Slavs, Huns, Danes, and Normans crowded upon and warred with each other. From such a period, when neither the agriculturist nor the artificer could control to any great extent the fruits of his labour, and when the merchant "stole along the hedges, shrank from the eye of the passer, and stepped into rivers cautiously, seeking a ford, lest the man at the bridge should rob him," but little in the way of economic or fiscal principle could be deduced. In short, a new society, the foundation and precursor of what now exists, was in the process of evolution; but in order that evolution might commence, it would seem to have been necessary that all the elements of the old should be completely dissolved, in order that its atoms might move freely—a condition like that to which the chemist is compelled to bring earthy mineral substances in order to effect their purification and crystallization.

The period when the molecules of society seem to have begun to combine anew, is generally assigned by historians to the eleventh century, when feudalism had become systematized into something analogous to general government,

and the power of the Church was especially manifesting itself; and was recognised to such an extent that it was able to establish throughout nearly all Europe a period known as "God's Truce," when warfare, plunder, and bloodshed were forbidden from sunset on Wednesday to sunrise on Monday; and "during the Christmas holy days and Lent no new defences were to be erected, nor old ones repaired. But this was not all. The provisions made for the protection of the labourer and for the produce of labour were far more characteristic of the dawning of a new era. Peasants in hostile territories were not to be injured or confined; the tools of agriculture, the hay and the grain stacks and the cattle, were all taken under the protection of the Church; and if seized, it must be for use and not for destruction. He that violated this truce was placed under censure of ecclesiastical power." From this period, therefore, it is only practicable to take up anew the thread of history, and attempt to resume the relation of some of the most instructive incidents that have since characterized the attempts of governments to defray their expenditures by levies upon the persons and property of their subjects or citizens. Before, however, so doing, the following historical facts may properly find a place.

**HOW THE DRUIDS COLLECTED REVENUE.**—An annual payment in the nature of a tax was exacted by the ancient Druids from every family for the benefit of the priests of the temple in the district in which the family lived. The families were obliged, under penalty of an ecclesiastical curse, to extinguish their fires on the last evening of October, and attend at the temple with a prescribed annual payment. This being made, they were entitled to receive, on the first day of November, some of the sacred fire from the altar, to rekindle the fires of their houses; and their neighbours were also forbidden, under a similar penalty, in any way to assist them. The result was, that delinquent taxpayers found themselves not only interdicted from the society of their fellow-men and from justice, the usual sequence of ecclesiastical excommunication, but also from the use of fire during the approaching winter.\* This

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\* Toland's *Critical History of the Celtic Religion and Learning*, containing an Account of the Druids, p. 105.

expedient for collecting a revenue was referred to by the British Chancellor of the Exchequer, in a speech in Parliament in 1871, in connection with a proposal to tax matches; and the motto, *Ex luce lucellum*, was proposed to be inscribed on match boxes in case the tax was enacted.\*

**MEDIÆVAL SYSTEM OF LAND TENURE.**—Among the nations that succeeded to the sovereignty of Rome, the title and ownership of land were regarded, as they are to-day in China, and in England and other European countries, as inhering primarily to the sovereign or chief of the state; and when partitioned among his nobles or chiefs, were held by them as it was termed on “tenure”; that is, on condition of performing certain services—mainly military, or the payment of a tribute—in the nature of rent. These conditions were ratified by oath, and the chiefs could only sublet, to their serfs or inferiors, on terms consistent with their own tenure.

Large domains were also set apart for the exclusive use of the sovereign †—both in his public and private capacity—the state and the sovereign being one and the same; and from the revenues thus accruing, and various fees and feudal incidents, the monarch, or feudal lord, was expected to defray all the expenses of the state, both public and private. Thus, the annual revenue of William the Conqueror is estimated to have been £400,000; which, taking into consideration that the *pound* at that time contained three times the weight of silver that it now does, and that silver had a comparatively great purchasing power, must have been equivalent to at least four or five millions of present money; and of the public expenditures of these ages it is important to note that there were very few that

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\* Dowell, *History of Taxation in England*, vol. ii, p. 367.

† The royal demesne (right of ownership) under the Norman kings was at one time of vast extent, comprising, according to Domesday Book, no less than fourteen hundred and twenty-two manors or lordships, besides farms and lands. It was divided into (1) forest; (2) land held by rural tenants; (3) royal cities, burghs, and towns. The first formed the king's hunting ground, and afforded supplies of venison, etc., for the royal table; the second supplied the king's table in other respects; the third was mainly the source of contributions for the discharge of the king's debts.

represented the bulk of the expenditures of modern governments.

Thus, for example, education was mainly confined to the clergy and the Church; and was efficiently supported by the produce of their own estates, or by tithes levied on the estates of others. There were few roads, and the labour of the serfs or peasants for a few days, before or after harvest, sufficed to keep in passable condition such as were needed to meet the demands of a very limited intercourse and commerce between different sections of the country. The administration of justice was held to be the perquisite of the lords or chiefs holding their estates direct from the crown, and, in place of being an expense, became through abuse and corruption a source of emolument. The standing army, which more than any one agency has tended to the impoverishment of modern Europe, could hardly be said to have then existed; the tenants in chief of the crown supporting the sovereign whenever he took the field with a body of retainers, armed and maintained in a large degree at their own expense. The necessity of taxes in the ordinary sense was, therefore, by these conditions entirely superseded; and if at any time there was a deficiency of revenue from the crown estates and fees, other sources of revenue were resorted to in preference to anything that could by any possibility be regarded as taxes.

Numerous old-time writers of authority—Montesquieu among the number—might be cited in support of what was then regarded as an eminently sound principle, that governments ought to be supported from revenues derived from the public domains, and that taxation should be resorted to as rarely as possible; because, as one of them expressed it, "one enters into civil society to protect one's property, and not to have it taken away from him." It is also interesting to note in this connection the tendency at the present time to go back to this old doctrine, and for states and municipalities to derive their revenues from other sources than taxation—as from the granting of franchises for railways, telegraphs, telephones, gas supply, lotteries, etc., on condition of participation in profits on gross receipts. Thus, the present net profit on the German state railways is understood to pay one third of the interest

on the public debt of Germany. Nearly all the Continental states of Europe derive a considerable portion of their needed revenues from the profits of their domains and forests—Prussia to the extent of about \$11,000,000 per annum; France, \$5,500,000; Hungary, \$3,000,000, and the like. The city of Paris derives about twenty per cent of its revenue from participation in the operation of franchises and income from productive property. In Berlin eighteen per cent of all the municipal expenses are reported as derived from the public gas supply. In Illinois the State expenses are mainly defrayed from the State's share of the annual profits of the Illinois Central Railroad; and in Louisiana also, the State formerly and until recently has participated in the profits of an authorized State lottery. If the ideas of Mr. Henry George, of a single tax on land, should prevail, and if such a tax does not diffuse itself, then the entire land of the country would in the course of time become the property of the state exclusively; and the old principle that a state should be supported from its own landed resources and property would be reasserted and established.

The following were some of the sources of revenue, other than what were assumed to be *taxes*, that were resorted to in mediæval times to make good any deficiency of income which the crown, as representing the state, derived from its special properties and privileges; and a reference to which is important, by reason of the flood of light they shed upon the concurrent social condition of the masses, and the utter disregard of their rulers of anything akin to justice in their administration of government. One of the most notable of these sources was the Jews, who during the middle ages had no rights of citizenship in Christianized Europe, and were held, in respect to their persons, goods, wives and children, at the absolute disposal of the chief of the state, to be taxed and despoiled by him at his pleasure. This utilization of the Jews as sources of revenue was far more thoroughly and systematically carried out in England than in any other country. "They were, in fact, the private property of the king; living instruments of his revenue; carefully protected by his government, unless in cases where exceptional necessity on his part or obstinacy on theirs made it expedient to bear upon them with un-



usual weight; \* not serfs bound to the soil, but slaves of the highest value, to whom to allow free action in the acquisition of wealth was the needful condition of reaping the fruit of their labour. There is a writ of Henry III in which, in payment of a debt to his brother Richard of Cornwall, he assigns and makes over to him "all my Jews of England." †

William Rufus (William II of England) actually forbade the conversion of a Jew to the Christian faith. "It was a poor exchange," he said, "that would rid him of a valuable property and give him only a subject."

Under Edward I of England the Jews were plundered and amerced to such an extent that it is estimated that they paid over one tenth of the entire revenue of the crown.

An explanation of the apparently anomalous circumstance that the Jews, although deprived of all civil rights and debarred from following most occupations, were able to be plundered to such an extent, is found in the fact that they were the "royal usurers," and under the king's protection spoliated through extreme usurious interest the Norman barons, who were always in want of money, and were not the men to readily tolerate "benevolences," or any other form of direct taxation for supplying the king with money necessary for the support of the government. So that when the king plundered the Jewish money lenders, he in reality obtained indirectly the money he needed from his barons, with far less odium and more profit than if he had proceeded against them indirectly.

Very curiously, this mediæval idea of regarding the Jews as a permanent, legitimate, and desirable source of revenue for the state, continued to find favour in England as recently as the reign of William and Mary, or in 1689; when, money being needed to prosecute the war with France, it was seriously proposed to exact, under the sem-

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\* Such a case of urgent necessity or inexcusable obstinacy must have been assumed as existing by King John, of whom it is related that on one occasion he demanded the sum of ten thousand marks (thirty thousand dollars) of a Jew at Bristol, and on his refusal to pay, ordered one of his teeth to be drawn every day until he should comply. The Jew, it is chronicled, lost seven teeth and then paid the sum required of him.

† Oxford Essays. By J. Bridges, Fellow of Oriel.

blance of taxation, a hundred thousand pounds from the Jews, and the proposition was at first favourably received by the House of Commons. "The Jews, however, presented a petition to Parliament in which they declared that they could not afford to pay such a sum, and that they would rather leave the kingdom than stay there and be ruined; and after some discussion the Jew tax was abandoned." For, as Macaulay expresses it, "Enlightened politicians could not but perceive that special taxation, laid on a small class which happens to be rich, unpopular, and defenceless, is really confiscation, and must ultimately impoverish rather than enrich the state." \*

It is hardly necessary to point out that ill treatment of the Jews has not been confined to English rulers and people. In every country or state of Christendom they have been subjected to arbitrary, unequal, and unjust exactions, deprived of ordinary political privileges, and driven as homeless wanderers from cities which their presence and their purses had enriched. And that this race antagonism continues to be perpetuated to the present day, is demonstrated by their recent and virtual expulsion from Russia; and even in the United States (where it might least be expected) by a vulgar and brutal denunciation by a member of the Federal Senate of the chief executive officials of the country, for the assumed reason that they had entered into a fiscal correspondence with an Englishman of Jewish descent, whom England had admitted to a seat in her Parliament, and whose whole life had been characterized by strict integrity, courtesy to all, and large benevolence.

Another extraordinary source of revenue to the crown in feudal times was the forfeiture of lands and estates for offences; and of the immense sums thus obtained, some idea may be formed from the circumstance, that up to the time of Elizabeth it has been estimated that nearly all the land in England had at some time fallen to the crown under the law of forfeitures. Other devices for the raising of revenue which were very productive, were fines for the alienation (legal conveyance) of land, which were exacted oftentimes to the extent of one third of their yearly value, whenever the tenant found it necessary to make over his

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\* Macaulay's History of England, vol. iii, chap. xv.

land to another; and from the sale of titles, which even as late as 1626, under Charles I, afforded considerable revenues. The right of marriage was subject (at least in the case of nobles and gentry) to the consent of the crown; and in some instances large sums were paid for the privilege; Simon de Montfort paying Henry III a sum, equivalent to five hundred thousand dollars at present, for permission to control the marriage of the heir of Gilbert d'Unfrankville. Mr. Dowell, in his *History of Taxation in England*, quotes the following as among one of the "fiscal curiosities" to be found on the Rolls of the Exchequer during the early Norman period: "Ralph Bardolph fines in five marks for leave to arise from his infirmity. The Bishop of Winchester owes a tonell of good wine for not reminding the king (John) about a girdle for the Countess of Albemarle; and Robert de Vaux fines in five of the best palfreys, that the same king would hold his tongue about the wife of Henry Pinel." \*

Another branch of the ancient revenues of the English crown worthy of special notice from its singular recognition within a comparatively recent period, was the right to "royal fish," meaning thereby the whale and the sturgeon, when the same were either cast ashore or caught near the coast; and which were originally acquired by the crown on the assumption that the sovereign guarded and protected the seas from pirates and robbers. This perquisite had so long been in abeyance that its sanction by law was hardly recognised in 1850, when the Duke of Wellington, as Lord Warden of the Cinque Ports, claimed and exacted the price—fifty pounds—of the carcass of a whale brought ashore and sold by certain boatmen on the coast of Kent. A point of contention was made by the boatmen, that, since the law was enacted, natural science had proved that the whale was not a fish; but the duke insisted upon his right under the letter of the law of compact with his office of warden—i. e., to protect the seas—as representative of the sovereign, and maintained it. He, however, subsequently practically admitted the lack of any moral foundation for his claim by dividing the price, after it had been formally paid him, with the boatmen.

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\* Dowell, vol. i, p. 28.

TAXATION IN ENGLAND.—Previous to the reign of Henry II of England (1154), the “tenure” or holding of lands from the crown required the personal attendance, at his own expense, of every tenant—knight or baron—with a certain number of retainers, upon the king in arms, for a period of forty days in each year; and failure to attend, or render the quota of men required by the tenure, would have involved a forfeiture of the tenant’s lands for nonperformance of duty. Such a military system, however sufficient for home protection or border warfare, proved ill adapted to foreign wars, which in the case of France were for a long period almost continuous; inasmuch as in those days of slow travelling a forty days’ service upon a distant expedition would have been of little account. For what could be more inconvenient for the leader of an army than to be under the necessity, on the expiration of the forty days, either to cut short the campaign, or purchase, by payments or promises, the continued service of his best soldiers? To overcome this difficulty a new system was arranged, it is said, by Thomas à Becket, which marked an important era in English taxation; whereby the king, in lieu of personal service by his barons and their retainers, agreed to substitute a tax called “*scutage*,” or shield tax; which, as levied at the rate of ten marks (£1 6s. 8d.) on every estate held by tenure, of the annual value of twenty pounds, was a *land tax*, payable in money, which before that period had not been definitely recognised. And thus it was that the king practically disarmed the feudal power by accepting money from the knights in place of armed service, and at the same time greatly strengthened his own power; as with the money thus raised he created a permanent and subservient army of mercenaries—a process which Michelet, the French historian, has characterized as a provision by the nobles of a bit and bridle for their own restraint.\*

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\* The reign of this English king—Henry II—is also signalized by an organization of the royal (state) revenue system which in some of its features has continued to the present time. Under it the management and general superintendence of the royal revenues were intrusted to certain officers of the king’s household, who constituted the “Court of the Exchequer,” so called from the checkered cloth laid upon the table upon which the tax collectors or treas-

Historians can find no evidence that the right of the English kings to levy taxes was in any case made contingent on any formal grant of any national council until toward the close of the reign of Richard II (1190);\* and we have a statement from the historian Hallam that, previous to that time, the system of extortion practised by the Norman kings upon their English subjects was "what we should expect to find among Eastern slaves."

Progressive civilization and the necessity for larger revenues than the domains and perquisites of the crown could supply to meet the expenditures of continued wars and the maintenance of standing armies, gradually, however, broke down (as has been before pointed out) the feudal system for defraying the expenses of the government; and the sovereigns were compelled to petition their tenants in chief, or the representatives of the great estates of their realms, to meet in assembly and co-operate with the crown in raising revenue by a more or less general system of forced contributions upon the persons and property of the people. And in this necessity is to be found the origin of the modern parliaments or states general; and also the inception of the modern system of taxation through

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urers told out the king's money; and the chief financial officer of the British Government at the present time is designated by the title of "Chancellor of the Exchequer." The payments, when made were entered into an account book, and from this transferred to a strip of parchment; which last was sent through a pipelike opening into a room specially provided, and called a "tally count," where a "tally" was made of it. This tally was a piece of dry wood on which "the cutter of the tallies" had to cut notches corresponding to the sum paid, while the "writer of the tally" wrote the sum down on both sides of the wood in figures. According to the length of the incision, one notch denoted £1,000; another £100; £20; 20s.; 1s.; and so on. The chamberlain then split the notched stick down the middle in such a manner that each half contained the written sums and the incised notches. The two matching parts thus split asunder were called "tally" and "counter tally," or "tally" and "foil" (*folium*). The one was retained by the chamberlain, the other was kept by the payer as a receipt and proof to be produced to the account department of the exchequer. This curious system of receipts was maintained in force until 1783; and it was through the burning, with a view to getting rid of an accumulation of these tally sticks, that the old House of Parliament in London was burned in 1834.

\* Stubbs, *Constitutional History of England*, vol. i, p. 577.

the representatives of the people. And the manner in which the great principle that representation should accompany taxation began to find a place in English legal or economic experience, through what was clearly a process of evolution, was undoubtedly as follows:

Under the Saxon and, for a lengthened period, also under the Norman kings, the revenues of the crown (as before shown) were mainly derived from taxes on land, which were paid in kind (produce), and what, as the holders of land were regarded as tenants of the crown, were in the nature of rents.\* But when, in order to enlarge the basis of revenue, personal property, in the form of movables or income, was brought under contribution, the situation became different; inasmuch as the titles of all such property not being primarily derived from the king, the consent of its owners to an official inquisition, necessary for proper valuation and assessment, was implied, and naturally was not willingly granted. And the great religious houses and orders, who in the main were the principal owners at this time of such property and were all-powerful, especially insisted that this consent should be recognised as a prerequisite to assessment; and, in at least one instance, re-enforced their position by an interdict from the Pope.

The successive steps, also, by which this great principle became recognised and incorporated into general practice have also been clearly worked out by historians. Thus, in 1181, under the reign of Henry II, each freeman was required to equip himself (for war) according to his means; and to determine what his means were, or his liability for taxation in respect to other than landed property—namely, chattels and income—four or six lawful men of his parish were chosen to determine and declare under oath the extent of his personal liability. In the next reign, that of Richard

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\* Rents (taxes) paid in kind continued in force in England after the Conquest, and certainly down to the reign of Henry I. Indeed, by reason of the scarcity of money, there was practically no other method of payment. But at the same time the collectors of the king's revenue, in the settlements of their accounts, were accustomed to reckon the value of produce in money at an established ratio: as, an ox at 1s.; a sheep at 4d.; so many measures of corn at so much, and the like.

I, this new principle of jury assessment was applied in a general way to the assessment of lands as well as chattels; and from thence the representative principle in taxation begins to ascend through successive stages, until it becomes established and recognised as the highest function of the British and all other essentially free governments.\*

The abandonment, furthermore, of the right on the part of the sovereign to make arbitrary exactions in respect to personal property, and the assumption by a class of privileged subordinates—i. e., legislators—of the right to vote or deny supplies to the king or state, and for the attainment of which results the English clergy of the thirteenth century led the way, marks also the dawn of constitutional or free government. All authorities are agreed, that on the clause in the Magna Charta of 1215 respecting the taxing power, is based all that has since been achieved in respect to English liberty. By it the king (John) was allowed to reserve for himself but three feudal aids, or rights, for extraordinary money allowances from the state, which very curiously have never been alienated from the English crown by any subsequent legislative enactment:

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\* It is, however, worthy of note that the only time when this subject appears to have prominently attracted the attention of the British Parliament and occasioned debate was in connection with the imposition of taxes, without representation, on the British colonies in North America, and which assumption of right on the part of the crown to thus act, subsequently led to the American Revolution. The question at issue before Parliament was, Had the state the right of taxing the colonies under existing circumstances, in default of representation of the taxpayers? The colonists did not deny the right of Great Britain to tax them; but they did hold that for the people of Great Britain to appropriate any part of the property without their consent was neither reasonable nor consistent with the British Constitution. And in the great debate in Parliament on this subject, in 1764, Mr. Pitt sustained the position of the colonists; and Lord Camden, who followed, said that "taxation and representation were inseparable," and that a blade of grass growing in the most obscure part of the kingdom could not rightfully be taxed without the consent of its proprietor.

Recent historical investigations have, however, shown (as before pointed out, chapter ii) that the grievance alleged and complained of by the American colonists was not peculiar to them, but was shared by the people of the mother country to such an extent that at the time of the colonial revolt not one tenth of them were allowed to participate by vote in the election of members of Parliament.



namely, to ransom the king in the case of his capture by an enemy; to defray the expenses of the knighthood of his eldest son; and third, on account of expenses incident to the marriage of his eldest daughter. In all other respects the charter provides that “no *scutage*”—by which is understood a land tax in commutation for personal military service—“or aid shall be imposed in our realm, save by the Common Council of our realm”; and this provision of the Great Charter was more explicitly reaffirmed and embodied in the form of law by a Parliament in 1297, which enacted that no tax should be levied by the king without the consent of the knights, burgesses, and citizens in Parliament assembled.

Again, in the earlier periods of English history, and probably also in the history of the other states of Europe, when the revenues from the property, fees, and perquisites of the crown, supplemented as they were from time to time by special parliamentary grants, benevolences, and subsidies, and the plunder of special classes—as the Jews—were found inconvenient and unreliable, and were replaced by more regular systems of contribution, the idea of taxation was, as centuries before in Rome, simply to obtain the necessary revenue, without much regard to the incidence of the tax or the interest of the producer, consumer, or trader. The end was alone considered, and not the means; and this policy, pervading all schemes and experiences of taxation, was then, as it ever has been, the most fertile source of bad taxes. The objects from which contributions at the period under consideration could be obtained were almost exclusively tangible and readily visible, as lands, hearths (representing houses), cattle, slaves or serfs, and the crudest of agricultural products. But as trade, or the business of exchanging, increased, it soon came to be looked upon as a proper subject for exaction. Customs, or taxes upon trade, were accordingly very early established, and at first were probably confined to domestic or internal trade. But with the rise and growth of foreign commerce the practice very naturally extended to foreign trade, and the terms “customs” and “duties,” which had an antecedent origin and meaning, eventually became restricted in their application to “taxes” or “exactions” on exports and imports. But yet so slowly did the customs in this sense



become an important source of English revenue, that the entire amount collected in 1603 was but £127,000, or but little in excess of \$630,000. Such taxes at the outset were furthermore held to be the king's private or personal dues, to be levied by him independently of any statute, according to his discretion, or, rather, according to his necessities; and it was not until the reign of Edward I that Parliament undertook to interfere with what had been considered an hereditary right of the crown, by providing in 1275 that for the purpose of correcting irregular seizures and exactions, a limitation should be established on the amount of duty that the king might take on the exports of wool and leather; and the duties thus regulated by statute on these two articles are regarded as the first legal foundation of the English customs revenue. But before the close of the reign of Edward III, or in 1353, the exclusive right of Parliament to authorize or control every form of indirect taxation was fully established, and for the time fully exercised; and the right thus achieved by the representatives of the people of participating in the levy of indirect or customs taxation, also necessarily drew with it the right to participate in general legislation, or upon all subjects which Parliament might deem proper.

It is also interesting to recall in connection with this subject, that when the old English kings began to levy tolls on ships entering into harbours, in common with tolls on transportation by roads and navigable streams, the tax was on the ship directly, and not specifically upon its contents. And in early charters instances occur of grants to individuals or monasteries of an exemption from toll for one ship of burden; and in the event of the destruction of the particular ship, the privilege was extended to another ship. But with such tolls or taxes once established, the idea soon developed that like forms of exaction might be made to serve a commercial purpose as well as produce revenue; and, as might have been expected, they therefore early became instrumentalities for fiscal oppression; and, with a view of advancing the interests of English merchants, or of protecting native industries, they were especially directed against the commerce of foreigners. And while the crown, as early as 1275, was deprived of much of its arbitrary power of levying customs for revenue, its prerogative of

restraining trade and imposing onerous burdens on exchanges with foreigners remained not only undisturbed but undisputed. Foreign merchants, or trading companies, frequently purchased immunity from such exactions; but yet, according to Mr. Hall, in his History of the English "Customs," "to the 'custos' of the ports, to the riverside baron, to the wayside outlaw and the town apprentice, the Lombard or Flemish peddler or merchant appeared as fair game for violence and extortion of every kind." And in the earlier records of England's customs experience, their oppressive features are of higher interest than their revenue or fiscal characteristics. English producers and traders, furthermore, having secured immunity from arbitrary taxation themselves, were quite willing to see this instrument of restraint and oppression turned against their foreign competitors; and, accordingly, during the whole of the sixteenth, seventeenth, and eighteenth centuries, and the first quarter of the nineteenth century, the whole commercial policy of England was based on the theory of the so-called "mercantile system"; the fundamental principle of which was that commerce could benefit one country only to the extent that it injured another; and that it was the part of wisdom always to secure a favourable balance of trade by selling as much and buying as little as possible, and receiving pay for what was sold, not in other useful products, but in gold.

But notwithstanding the early restrictions imposed by Parliament on the power of the crown to appropriate the property of the people for its support, arbitrary exactions in the name of taxation continued to characterize the rule of all the English monarchs down to the time of Charles I, when the claim of the king to a divine right to take taxes from subjects, with or without their consent, was settled by the dethronement and execution of the monarch and the establishment of the Commonwealth; and ever since then the grants of an annual Parliament have been a prerequisite to any lawful expenditure for the maintenance of the English state.

To the necessities of the Long Parliament, during its contest with the crown, and when the receipts of revenue from former sources were interrupted, we owe the permanent incorporation of the so-called excise taxes into the

tax system of England. Another most novel contrivance of this period for the raising of revenue was the so-called weekly impost of a single meal; every citizen being required to retrench one meal per week and pay an amount representing the saving, in the form of money, into the public treasury; a tax that yielded in six years £608,400, or more than \$3,000,000; an aggregate that represented a far larger purchasing power than the same amount would at present.

During the nineteen years that elapsed from the beginning of the English Revolution to the restoration of the monarchy under Charles II, the average annual expenditures of the Commonwealth were about seven times greater than those of the preceding royal Government; and as unlawful taxation was the prime cause of the establishment of the Commonwealth, so excessive taxation furnished the prime cause of popular rejoicing when the Commonwealth was got rid of.

A circumstance of no little importance, but which some historians have overlooked, is, that the revolt of the American colonies and their separation from Great Britain were in the first instance due to an effort on the part of the landholders of Great Britain to transfer from themselves to the people an ever-increasing portion of the expenses of the Government. But such was the fact. In 1767 the British Parliament, which was mainly composed of landholders, reduced the previously existing land tax to the extent of about half a million pounds per annum; and it was for the purpose of making up a resulting deficiency of receipts to the British treasury, that the Chancellor of the Exchequer of George III resorted to the taxation of tea, glass, and other articles imported into the American colonies, as well as the requirement for the use of stamps on the paper instrumentalities used by the Americans, and the payment for which the colonists resisted.

Finally, a feature of special importance in connection with the history of English tax experiences, one often overlooked in historical essays and discussions, but which ought to command the attention of all interested in the origin of the structure and diversities of governments, is the demonstration it affords of the close connection between taxation and popular liberty. Take up the history of any people, state, or nation that has fought its way, like Eng-

land, out of despotism into liberty, and what are the transactions that most significantly mark and constitute its progress? The story is substantially the same in every case. First, a government of might supported by arbitrary exactions from persons and property—tribute, *taille*, *scutage*, *gabelle*, *corvée*, escheats, *octroi*, *vingtième*, customs duties, subsidies, benevolences, and the like—levied at the will or caprice of an absolute and despotic chief or monarch, and without any consultation with or assent of the governed. Then, in some hour of royal adversity or need, the monarch appeals for aid to the more powerful of his subjects—lords and nobles—who, in turn, taking advantage of the situation, vote or grant it, in consideration of the concession of some “Magna Charta,” limiting in a measure the sphere of exactions on the part of the monarch, or at least securing to a few of his privileged subordinates a voice in regulating and legalizing the same. Later comes the struggle between the privileged few and the unprivileged many, and sooner or later, by peaceful political progress, or by violence and revolution, the privileged class ceases to be a separate potential element of the state, and thence passes to the people the sole right to determine, through their chosen representatives, what grants of supplies shall be made for the support of the state, and how the burden of taxation which they entail shall be distributed. And then, if further progress is to be achieved, to the end that in exercising the great power of appropriating private property for defraying the expenses of government, no more be taken than is necessary; that none shall be assessed unequally; that the greatest freedom may be secured for production and distribution, and the greatest restrictions placed on monopolies, there must be, through study and investigation, such an improvement and remodeling of all existing systems of taxation as will completely eliminate from them all practices that rest upon no better basis than old prejudices and narrow, selfish interests, and make them conformable to principles and conditions which, when presented abstractly, will command almost universal assent.

## CHAPTER V.

### TAXATION IN FRANCE AND MEXICO.

No chapter in history is more replete with interest and instruction than that which exhibits the system for exacting contributions for the support of the state which characterized the fiscal policy and administration of France during the seventeenth and eighteenth centuries, and which is now acknowledged to have been mainly instrumental in bringing on the memorable Revolution in the closing years of the latter century.

Feudalism in France, previous to 1789, had come to find its expression almost exclusively in the claims on the part of the various and multiplied representatives of authority—nobility and clergy—to regulate taxation, in respect to both imposition and exemption.

The kingdom was divided into departments, with an officer called an "intendant" or "farmer-general" (*fermier général*) at the head of each, into whose hands the whole power of the crown in respect to revenue matters was delegated. Each department was then subdivided, and at the head of each of these subdivisions a deputy was appointed by the intendant. The rolls or lists of the various crown taxes, for polls, service, incomes, "proportions," and the like, were distributed by the intendants to their deputies, who had the power to exempt, change, add to, or diminish the list at their pleasure.

It must be obvious, that the friends of the intendant and of all his deputies, and the friends of their friends, might be favoured at the expense of the helpless masses; and that great noblemen in favour at the court, to whom the intendant himself would naturally look for protection, would especially find little difficulty in transferring most or all of the burden of tribute rightfully due from them

to the state, to others who had no such influence. The result was that taxation in France at the period mentioned had become in the highest degree arbitrary, and a scarcely disguised form of plunder; and the methods of assessment were so crude and defective that it is probable that the state never received fifty per cent of the amount collected, and in many cases no more than forty or thirty per cent. The expenditures of the revenues received were, moreover, characterized by so little system as to render it difficult to exercise any efficient check upon them, or to ascertain accurately at any one time (as was especially the case during the latter third of the eighteenth century) the true state of the national exchequer; all of which fostered indefensible waste and extravagance. At the death of Louis XV in 1774, the annual expenditure of the king and his household probably amounted to one eighth of the entire revenue of the state,\* and the total indebtedness of the state in 1789, the year of the commencement of the Revolution, was estimated as being in excess of \$1,000,000,000, carrying an annual interest of \$206,000,000; and it is to be remembered that these figures must be at least doubled to represent the corresponding sums of the present day. All this indebtedness, and all that was subsequently incurred through the issue of irredeemable assignats" (paper or fiat money), was ultimately, through one means or another, entirely repudiated.

In the collection of levies the inquisitorial, infinitesimal assessment and dooming penalty system, the like of which still finds favour in Massachusetts, was carried out to perfection; and the only rule of practice which in different districts could prefer any claim to uniformity, was the rule of inequality of assessment, and harshness and cruelty in collection. Arthur Young, an English gentleman of culture and keen powers of observation, who travelled in France in 1787-'89, states, in recording the above experiences, that "he shuddered at the oppression of which he became cognizant."

One of the chief sources of revenue to the state was

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\* There were seventy-five officers connected with the king's chapel alone; forty-eight physicians, surgeons, and apothecaries attached to his person; and three hundred and eighty-three men and one hundred and thirty-three boys employed for his table.

from an exaction known as the *taille*,\* which was mainly in the nature of a direct tax on land, though in some provinces it was a levy on both polls and land. The history of this exaction has been carefully investigated and is not a little interesting. It originated in the early feudal period, and was imposed on persons originally bondsmen, or on persons who held in "*farm*," or *lease*, or resided on the lands of a noble or suzerain, and from which the proprietors or suzerains of the land were exempt. And as no vassal could at will divest himself of servitude or allegiance to his lord or suzerain, so the obligation to pay tribute (taxes?) always remained upon him as a personal servitude, wherever he might be. In other words, the condition of the masses in France during the middle ages was not unlike the condition of the slaves in the United States previous to emancipation. These had property in their possession, and spoke of themselves as owners of property, but in reality their property followed the condition of the servitude of their persons, and both persons and property belonged equally to the masters. The *taille*, furthermore, as a badge of servitude, was supposed to dishonour whoever was subject to it, and degrade him not only below the rank of a gentleman, but of that of a "burgher," or inhabitant of a borough or town; "and no gentleman, or even any burgher," writes Adam Smith in 1775, "will submit to this degradation." †

The hardship and injustice of the practical working of the *taille* may be thus illustrated: "In all cases the nobility and the clergy were exempt from its payment, as were also the holders of a multitude of minor Government offices, which, however, did not carry with them any patent of

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\* The *taille* was the equivalent of the English "tallage." But the discretionary power of levying the impost was taken away from the English crown and nobility by the provisions of Magna Charta.

† Repulsive and barbarous as was the *taille*, it is curious to note that the principle involved in it still survives and finds recognition and practice in States claiming a high civilization; as, for example, in Massachusetts and Connecticut, where personal property is held to owe a servitude to the State and to be subject to taxation by it in virtue of the citizenship or personal domicile of its owner, although the property itself may be located beyond the territory and jurisdiction of the taxing power.

nobility. These exempt classes, which in the time of Louis XIV are believed to have numbered some 300,000 out of a total estimated population of 25,000,000 in the kingdom, owned about one half of the whole soil of France; so that the burden of the *taille*, amounting in 1789 to 110,000,000 livres (francs), fell exclusively on the rural classes; especially upon the agricultural interests, which it would have been sound policy on the part of the state to favour.

“ But the mode in which the *taille* was levied still further illustrates its iniquity. The Comptroller-General of the Finances, in the first instance, decreed that a certain aggregate sum was to be raised, and then two subordinate officials and the local landlords in each province and parish were left to decide among themselves how the prescribed amount was to be exacted from the taxpayers. The combined forces of jobbery and absolute authority rendered its incidence grossly unfair, the poorer localities generally paying the larger share, while the richer ones escaped lightly. Thus there was brought about a condition of things in which the most miserable sections of the community were made to feel their inferiority in every relation of life. They were humbled in all their feelings, and they could not but loathe those whom birth or favouritism had placed above them.” \*

Besides the *taille*, two other forms of direct exaction were included in the fiscal policy of France at the period under consideration—namely, a so-called capitation tax, which was a kind of graduated tax on capital, and from the incidence of which there was theoretically no exemption; and the *vingtième* (one twentieth), instituted by Colbert, which was an income tax, and supposed to be levied on every class. Owing, however, to inefficient administration, and to the circumstance that the clergy occasionally bought exemption for themselves for a term of years by the payment of a lump sum, the revenue derived from these sources was always much less than it ought to have been, the privileged class to a large extent evading assessments.

The almost complete exemption of the clergy of France

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\* The Financial Causes of the French Revolution. By Ferdinand Rothschild.



during the ante-revolutionary period from taxation, whereby those who were supposed to preach and practise charity were so intent upon securing worldly vantage as to have thrown nearly all their duties and responsibilities to the state upon the poor, constitutes one of those striking contradictions which so often confront us in history.

The indirect taxes were very numerous; comprising the customs, the *octroi*, the excise, and special taxes on wines, cards, tobacco, salt, and on a great variety of manufactured products; and in their collection the arbitrary, inquisitorial, infinitesimal, and penalty system was carried out to perfection. It was this class of taxes which undoubtedly pressed most heavily on the French poor, and from the direct incidence of which the Church and nobility managed in a great degree to escape. Very curiously, also, they constituted an inducement to the peasantry to seem poorer than perhaps they actually were, and to live in low, thatched cottages, without floors or glass in the windows, inasmuch as any improvement of their dwellings meant an increase of their taxes. Custom duties were levied, not only at frontiers of the kingdom, but between every province of France. The *taille* was exacted with military severity. "Carriages and carts were stopped on the highway and searched by the tax collectors; no private house was safe from them by day or by night; and on the slightest suspicion they used the power of arrest that was vested in them. Prosecutions for unpaid taxes were carried on with the utmost rigor. The clothes of the poor were seized, and even their last measure of flour, and the latches on their doors. Collectors, accompanied by locksmiths, forced open doors and carried away and sold furniture for one quarter of its value, the expenses exceeding the amount of the tax."—*Taine*.

The most vexatious, arbitrary, and extraordinary tax of this period was that imposed on salt, and known as the "*gabelle*"; and to one who now acquaints himself with its history and details it must seem almost inconceivable that any country claiming to be civilized ever could have had such an experience. In order to effectually secure at the outset the payment of this tax, the right to produce and sell salt was vested exclusively in the state. By an ordinance in 1780, every person over seven years of age was

required to purchase, not at convenience, but on one stated day of each year, seven pounds of salt, which in a peasant's family of four, according to Taine, entailed an expense equal to the average wage receipts of nineteen days' work. It was forbidden also to divert a single ounce of the seven obligatory pounds to any use but the "pot and the salt cellar." If any one failed in these observances he was fined; and he was also fined if he purchased a smaller quantity than the law prescribed. To supplement the use of salt with water from the ocean, or from saline springs, or to water cattle in marshes or other places containing salt, was forbidden under severe penalties. In certain departments of France it was also made incumbent on officials periodically to destroy, often by defilement, all deposits of salt which were formed naturally. No retail dealing in salt was permitted, but Government warehouses were established, often at places at considerable distances from towns and villages, where their inhabitants were compelled to make their purchases. According to a report made by the comptroller-general in 1787, the salt tax at that time annually occasioned "four thousand domiciliary seizures, three thousand four hundred imprisonments, and five hundred sentences to flogging, exile, and the galleys." \*

But in addition to the so-called national system, which imposed a great variety of taxes upon all persons and property in France which could not through favour procure exemption, which exemption embraced practically all the nobility, clergy, and gentry, there were a great number of taxes peculiar to separate estates or seigniories, but at the same time more or less general. Thus, all the various operations involved in production and consumption were made, as far as possible, the occasion for tax assessments. The tenants, or vassals, were bound to grind their corn at the mill of the seigneur only; to bake their bread exclusively at his ovens; to press their grapes and apples exclusively at his presses; and for every such industrial conversion a toll or tithe was collected. One of the memoirs touching the condition of the Tiers Etat, as the common people were called, published about the time of the meeting of the National Convention, expresses a hope that pos-

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\* Taine, *Ancient Régime*, pp. 358-362.

terity may be ignorant that feudal tyranny in Brittany, armed with judicial power, did not blush at breaking hand mills and selling annually to the miserable people the privilege of bruising between two stones a measure of buckwheat or barley.

Movements of persons or property from one town or parish to another always involved taxation. If a farmer or labourer moved from one parish to another, it was held that he could not separate himself from a residence once adopted, but remained there for taxation, although he might actually and permanently have left it and be paying taxes in another place. All movements of property and persons were discouraged; and it not infrequently happened that there was grievous famine in some departments of France, and a surplus of food at the same time in others not very far distant, because of the inability of producers in the latter to dispose of an abundant harvest for lack of any remunerative market or demand. Every sale or transfer of property also carried in it a payment to the seignior, or lord of the manor, to the extent of one eighth and sometimes one sixth of the entire equivalent received in consideration. And it is interesting here to note that this exaction was recognised and enforced in French Canada until the abolition of seigniorial tenure, forty years ago. Arthur Young states that at the time he travelled in France, 1787-'89, the very terms used to designate the taxes imposed on the peasantry were in many instances untranslatable into English; and from a long list of such terms as he recorded, very few can be found and defined in any ordinary French lexicon.\* In order, however, in some degree to satisfy curiosity as to the nature of these abominations, it may be mentioned that one of the local taxes in Brittany, which remained in force down to 1789, and was known as the "*silence des grenouilles*," was a money pay-

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\* Of such terms Mr. Young mentions the following as expressive of the tortures of the peasantry in Bretagne (Brittany), without attempting to define their exact meaning: "*Cherauchés, quintaines, soule, saut de poison, baiser de mariées, chansons, transporte d'aruf un charette, silence des grenouilles, corré à miséricorde, milods, leide, couponage, cartelage, barage, fouage, marechaussé, banrin, ban d'abut, trousses, gelinage, cirerage, taillabilité, vingtain, sterlage, bordelage, minage, ban de vendanges, droit d'acapte*," etc.

ment in lieu of an ancient feudal obligation incumbent on the residents of marshy districts to keep the frogs still, by beating the waters, that the lady of the seigneur might not be disturbed "when she lies in"; while another exaction, still more outrageous, which was not repealed until the French revolutionary convention in 1790 swept it from the statute book, was a tax known as *cuissage*, or "*droit du seigneur*," which was paid to the seignior as a substitute for his ancient and formerly undisputed right to the possession before marriage of the person of every female, the daughter of any of his serfs or more dependent vassals.\*

Another relic of old feudalism which prevailed in France down to the period of the Revolution, and which, indirectly a tax, was most oppressive and impoverishing to the French rural population, was an obligation termed the *corvée*, imposed upon them to keep the main roads of the kingdom in repair without being remunerated for their labour or for the services of their animals. They were thus frequently forced away with their teams from their fields, at the demand of any travelling noble or important personage in either church or state, and often at a time of sowing or harvesting, when they could be least spared; and were occasionally required to travel long distances in order to reach their allotted work. While they were thus compelled to keep the main roads of the kingdom in repair, which were generally of little use to them, the local or parish roads, on which they were dependent for their communication with adjacent towns or villages, were allowed by the Government to remain neglected.† For many years

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\* This exaction, the reality of which has been called in question, would seem to be a necessary incidence or outcome of slavery or serfdom, inasmuch as the condition of slavery implies no rights on the part of a slave that the master is bound to respect. Mr. Thorold Rogers is authority for the fact that this *droit du seigneur* was recognised under various names, as *jambage*, *mercheta*, and *mantagium*, in France in the thirteenth and fifteenth centuries, and that fines in recognition and in lieu of this ancient manorial right were probably paid in England almost as late as the administration of Cromwell.

† This practice or institution of the *corvée* was undoubtedly of ancient Eastern origin, and until recently existed in Egypt; a very considerable part of the labour employed in constructing the Suez Canal having been performed, in accordance with the orders of the then ruling Khedive, under its conditions.

previous to the Revolution, the institution of the *corvée* undoubtedly meant to the French peasantry a period every year of from twelve to fifteen days of forced labour for the construction and repair of roads, for which the nobility, clergy, and town merchants contributed not a sou, or an hour of work.

And now comes an exceedingly interesting but little-known chapter in French history. There were men of large hearts and great intelligence in France during the reign of Louis XIV (1643–1715) who were not only keenly appreciative of the oppressions and sufferings of the French people by reason of their horrible system of taxation, but also of the certain destructive influence of this system on the industry, society, and government of the kingdom.\* Among these was the celebrated Marshal Vauban, who, although a soldier by profession, and holding one of the highest offices among the privileged nobility, had made a study of the misery of his countrymen, and had discerned in a great degree its cause and was seeking for its remedy. The knowledge that his office as Marshal of France gave him of the necessity for great expenditures—the country being almost always at war—and the little hope he had that the king would retrench in matters of splendour and amusement, left him no other alternative but to try to find some method by which the burden of the multitudinous taxes imposed for defraying these expenditures might not be enormously and unnecessarily augmented by their method of taking. He accordingly proposed what was in effect a *single tax*—namely, that the king should annually take by one act or payment a royal tithe of a twentieth, or not more than a tenth (*dixme royale*) of all the property of each community, or of each person in the kingdom; and that this simple and sole tax, which would suffice for all, and which would pass directly into the coffers of the king, should be the means by which every other form of tax or exaction from the people, with all its complicated, inquisitorial machinery for collection, should be abolished.†

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\* During the eighteenth century famine periodically decimated the rural population of France, and forty million acres went out of cultivation.

† Vauban proposed to maintain a tax on salt, customs duties on imports, and registry duties.

About the same time a lieutenant-general of France—one Boisguillebert, of Rouen—took up the investigation of the same subject, and published a really learned and profound book; in which he also proposed a new system of taxation, which he claimed would at once relieve the people of many taxes, and the state of the necessity of great expenditure, by providing that the proceeds of every tax should go at once into the treasury of the king, instead of enriching first the farmers-general, the finance ministers, and their deputies.

The system of Boisguillebert was analogous to that proposed by Vauban, with the exception that the former advocated the continuance of some taxes on foreign commerce and upon foods, and the latter desired especially to abolish most of such forms of taxation.

Admirable in many respects as were these proposed reforms; clearly based as they undoubtedly were upon what are now recognised as sound economic principles, they had one great defect: they prescribed a course which, if followed, would have taken away the means of livelihood of a very large number of officials. It would have compelled them to live at their own expense, instead of at the expense of the public. This was enough to insure their failure. All the people whose interests, fortunes, and emoluments were threatened arrayed themselves in opposition; for they reasoned truly that place, power, wealth, and social position would fly from their grasp if the counsels of Vauban were to be followed. It is not to be wondered, then, that the king listened to the advice of the multitude who were privileged to talk with him, rather than to his one clear-headed, unselfish, faithful servitor; or that when Marshal Vauban presented him with a book embodying and explaining his fiscal views and system, he received it with a very ill grace. His ministers also, even if they were contrarily disposed, which is not probable, could not do otherwise than follow the views of the king, and from that moment the splendid services of the marshal, his military genius, his virtues, the former affection the king had had for him—all were forgotten. He stood in the position of one courting the favour of the people, and contemning and weakening lawful authority. The circulation of his book was forbidden, and all the copies which the state could

reach were destroyed; while the unhappy marshal, unable to survive the loss of the king's favour, or stand up against the enmities he had created, soon died of a broken heart.

His friend Boisguillebert, whom these events ought to have made prudent, could not restrain himself, but published a book vindicating Vauban, and answering one of the principal objections to his system—namely, the impracticability of making any radical changes during a great war—by asking if it was necessary to wait for peace before abolishing great abuses. This was a more offensive contemning of authority than Vauban had committed; and Boisguillebert was stripped of his functions, severely reprimanded, and sent into exile. For this he was in a degree recompensed by the acclamations and approbation of the people wherever he went.

The system and abuses which Vauban and Boisguillebert endeavoured to reform accordingly continued; but as years went on, and the misfortunes of France accumulated and culminated in the total defeat of her armies by Marlborough, the necessity of larger revenues to meet larger expenditures became most urgent; but how to provide them was a problem which brought no little embarrassment to Louis XIV's ministers. At last Desmarets, who was Comptroller-General of the Finances, proposed to the Council of State, as a way out of their difficulties, that they should, *in addition* to all existing numerous and abominable taxes, establish or take on the system of a royal tenth, which had been proposed by Vauban and Boisguillebert as a substitute for all other taxes; with all the new machinery, officials; and valuations which such a system entailed. The proposition, after a brief consideration, was approved by the Council, and Desmarets was authorized to present it to the king; who, although long accustomed to various and extravagant exactions, is related at first to have been greatly terrified, and to have exhibited for some eight or ten days a profound melancholy. At the expiration of this period he regained his usual calmness, and gave the following explanation of the cause of his trouble: He said that he had been much tormented that the extremity of his affairs required him to take so much of the wealth of his subjects; and that at last he unbosomed himself to the Père Letellier (his confessor), who after a few



days returned and reported that he had laid the matter before the most eminent doctors (theologians) of the Sorbonne, by whom it was decided *that all the wealth of his subjects was the king's, and that when he took of it he only took what belonged to him.* The king added that this decision had taken away all his scruples, and had restored to him all the calm and cheerfulness that he had lost. After the king had been thus satisfied by his confessor, no time was lost in establishing the tax. The effect upon the masses was one of great sadness, but there was no revolt. Many of the property holders in the kingdom endeavoured to convince the state officials that under the former condition of affairs they did not enjoy a tenth part of their income, and representatives of the province of Languedoc offered to give up its entire wealth to the crown, if they might be allowed to enjoy, free of every tax, the tenth part of it. All these remonstrances and propositions were not only *not* listened to, but their presentation was regarded in the light of insubordination.

The product of this new tax was not nearly so much as had been expected; and its most marked result was, that it enabled the king to augment all his infantry to the extent of five men per company.

In this record of tax experience, which, commencing at least as far back as 1667, under Louis XIV, continued with increasing popular oppression and misery until 1789, we find the origin and the horrors of the French Revolution which began in the latter year. During its continuance six thousand persons, mostly of the ranks of the nobility, clergy, and gentry, are said to have perished under the hands of public executioners and upon the scaffold. But when one calls to mind the multitudes that, for many successive generations, were starved and tortured out of existence by a system of exactions under the name of taxation, and for which system the king, the nobility, the clergy, and the influential classes of France were responsible, the wonder is that the masses of a brutalized and infuriated people should have shown so much clemency and restraint in the hour of their vengeance and of triumph.\*

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\* On this point Arthur Young, whose observations on the condition of the French people were made before the great Revolution had culminated, or in 1789, writes: "It is impossible to justify



It is interesting also to note in this connection that against no one class, when the revolutionary element became ascendant in France, was popular hatred more intense than to the farmers-general, to whom the collection of taxes in the different provinces of the kingdom was farmed out or contracted. The extravagant expenditure which, as a rule, characterized their living, was regarded by the masses as all-sufficient evidence of the enormous profits unjustly accruing to them from these contracts; and the power continually exercised by their agents to make domiciliary visits, seize goods, inflict fines, and take other measures of an arbitrary, obnoxious character to enforce compliance with extortions, all contributed to make them objects of execration by nearly the entire people. And this animosity under the revolutionary government speedily manifested itself, by sending thirty-two out of the whole number—sixty—of these high officials to the guillotine; among whom were undoubtedly some honest and conscien-

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the excesses of the people on their taking up arms. They were certainly guilty of cruelties. But is it really the people to whom we are to impute the whole, or to their oppressors, who had kept them so long in a state of bondage? He who chooses to be served by slaves, and by ill-treated slaves, must know that he holds both his property and life by a tenure far different from those who prefer the service of well-treated freemen; and he who dines to the music of groaning sufferers must not, in the moment of insurrection, complain that his daughters are ravished and then destroyed, and that his sons' throats are cut. When such evils happen they surely are more imputable to the tyranny of the master than to the cruelty of the servant. The analogy holds with the French peasants. The murder of a seigneur, or a château in flames, is recorded in every newspaper. The rank of the person who suffers attracts notice. But where do we find the register of that seigneur's oppressions of his peasantry, and his exactions of feudal service from those whose children were dying around them for want of bread? Where do we find the minutes that assigned these starving wretches to be fleeced by impositions, and a mockery of justice in the seigneurial court? Who gives us the awards of the intendant and his sub-delegués, which took off the taxes from the man of fashion, and laid them with accumulated weight on the poor who were so unfortunate as to be his neighbours? Who has dwelt sufficiently on explaining all the ramifications of despotism, regal, aristocratical, and ecclesiastical, pervading the whole mass of the people, reaching like a circulating fluid the most distant capillary tubes of poverty and wretchedness?"—*Young's Travels in France*, p. 323.

tious financiers and otherwise distinguished men, such as Lavoisier, the father of modern chemistry.

One of the great results of the French Revolution, which ought to be duly weighed in reckoning up the good and evil of that mighty popular convulsion, is that it swept away the feudal land laws of old France and made land-owners of several millions of men who were formerly serfs. Fully one half of the land of France at the present time is owned by small farmers or peasants; and in their hands has been demonstrated afresh what Arthur Young called the magic power of property to turn sand to gold. Regions which he visited in 1788, and found barren and deserted, a hundred years later were clothed with vines and gardens under the tillage of peasant proprietors.

From the foregoing consideration of France in the last century, experiencing through the abuse of taxation the most awful revolution in history, let us turn to a country of our own time and continent, and observe methods of taxation yet surviving the rigor and barbarism of the mediæval period.

**TAXATION IN MEXICO.**—Until recently, and to a great extent at present, the system of taxation operative in Mexico, the origin or evolution of which may in no small part be attributed to a sparseness of population, lack of accumulated wealth or capital, limited wants, and low civilization of the masses, is especially worthy of notice, and most instructive from the circumstance that nothing like it exists in any other country.

The duties levied on imports into Mexico are so excessive that the *average* rate of the Mexican tariff is probably greater than that adopted by any other country claiming to be civilized, with the possible exception of Russia. The favourite modern idea of making the tariff subserve two purposes—namely, the raising of revenue and the regulation of trade—does not appear as yet to have greatly interested either the people or Government of Mexico, as revenue, through the necessities of the state, is the supreme consideration; and for securing this no other rule seems to have been recognised and followed in imposing duties on imports than that the higher the duty (or tax) the greater will be the accruing revenue.

But with this general characterization of the Mexican

tariff there comes in the following other most anomalous feature: Thus, in all commercial countries, save those which permit the levy by certain municipalities of the so-called *octroi* taxes, when foreign articles or merchandise have once satisfied all customs requirements at a port, or place of entry, and have been permitted to pass the frontier, they are exempted from any further taxation *as imports* so long as they retain such a distinctive character. In the United States, for example, it is held that the right to import carries with it a right to sell (i. e., in the original packages) without further restrictions. And the Supreme Court of the United States has decided that a license tax imposed by a State of the Federal Union, as a prerequisite to the right to sell an imported article, is equivalent to a duty on imports, and in violation of the provision of the Federal Constitution which prohibits the States from imposing import duties; and this decision has been carefully recognised by the authorities of the several States in dealing with imported liquors under local license, or other restrictive laws.\*

But, in Mexico, each State of the republic has, until recently, had practically its own custom-house system, and levies taxes on all goods—domestic and foreign—passing into its territory for the purpose of use or consumption; and then, in turn, the several towns of the States again assess all goods entering their respective precincts. The rate of State taxation, being determined by the several State Legislatures, varies, and varies continually, with each State. In the Federal District—i. e., the city of Mexico

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\* “An importer of foreign goods, in his capacity as such, is not the subject of State taxation, and can not be required to pay a license fee as importer; and his sales are exempt from State taxation, because he purchases, by the payment of the duty, a right to dispose of the merchandise as well as to bring it into the country; and the tax, if it were admissible, would intercept the import, as an import, in the way to become incorporated with the general mass of property, and would deny it the privilege of becoming so incorporated until it should have contributed to the revenue of the State. But when the importer has sold the imported package, or has otherwise mixed the goods with the general property of the State by breaking up the package, a State tax which then finds the articles already incorporated with the mass of property by the act of the importer is not a tax upon commerce.”—*Cooley, The Law of Taxation*, p. 68.

—the rate was recently two per cent of the national tariff; but in the adjoining State of Hidalgo it was ten per cent, and in others it has been as high as sixteen per cent. The rate levied by the towns is said to be about nine per cent of what the State has exacted; but in this there is no common rule. Nor is this all. For the transit of every territorial boundary necessitates inspection, assessment, the preparation of bills of charges, and permits for entry; and all these transactions and papers involve the payment of fees, or the purchase and affixing of stamps. Thus, by section 377 of the tariff law of December, 1884, it is ordained that “the custom house shall give to every individual who makes any importation, upon the payment of duties, a certificate of the sum paid, which certificate, on being presented to the administrator of the stamp office in the place of importation, shall be changed for an equal amount in custom-house stamps. For this operation the interested party shall pay, to the administrator of whom he received the stamps, two per cent in money (coin) of the total value of the stamps.” All imports into Mexico are liable, therefore, to these multiple assessments; and the extent to which they act as a prohibition on trade may be best illustrated by a practical example.

In 1885 an American gentleman, residing in the city of Mexico as the representative of certain New England business interests, with a view of increasing his personal comfort, induced the landlady of the hotel where he resided (who, although by birth a Mexican, was of Scotch parentage) to order from St. Louis an American cooking stove, with its customary adjuncts of pipes, kettles, pans, etc. In due time the stove arrived; and the following is an exact transcript of the bills contingent, which were rendered and paid upon its delivery:

## ORIGINAL INVOICE:

1 stove .....	weight 282 pounds.
1 box pipe.....	“ 69 “
1 box stove furniture.....	“ 86 “

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Total .....	437 pounds, or 199.3 kilos.
Cost in St. Louis, United States currency.....	\$26 50
Exchange at 20 per cent.....	5 30

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Total .....	\$31 80
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ORIGINAL INVOICE (*continued*):

Freight from St. Louis to city of Mexico (rail), at \$3.15 per 100 pounds.....	\$15 75	
Mexican consular fee at El Paso.....	4 85	
Stamps at El Paso.....	45	
Cartage and labour on boxes examined by custom house at El Paso.....	50	
Forwarding commission, El Paso.....	2 00	
Exchange 16½ per cent on \$7.64 freight advanced by Mexican Central Railroad.....	1 25	
	<hr/>	\$56 60

IMPORT DUTIES:

1 box, 128 kilos (stove), iron, without brass or copper ornaments, at 19 cents per kilo.....	\$24 42	
1 box, 31.3 kilos, iron pipe, at 24 cents per kilo..	7 51	
1 box iron pots, with brass handles, at 24 cents per kilo.....	9 48	
	<hr/>	\$41 41
Add 4 per cent as per tariff.....	1 65	
	<hr/>	\$43 06
Package duty, 50 cents per 100 kilos.....	1 00	
	<hr/>	\$44 06
Add 5 per cent as per tariff.....	2 20	
	<hr/>	\$46 26
Add 2 per cent municipal duty.....	93	
	<hr/>	\$47 19
Add 5 per cent consumption duty.....	2 36	
	<hr/>	\$49 55
Despatch of goods at Buena Vista station, city of Mexico.....	38	
Stamps for permit.....	50	
	<hr/>	\$50 43
		<hr/>
		\$107 03
Cartage in City of Mexico.....		75
		<hr/>
Total .....		\$107 78

Résumé:

Original cost of stove, with exchange.....	\$31 80
Freight, consular fees, and forwarding.....	24 80
Import duties.....	50 43
Cartage .....	75
	<hr/>
Total .....	\$107 78

Under such a system articles of the most common use in the United States are from their increase of price necessarily made articles of luxury.

Again, the Mexican tariff provides that the effects of immigrants shall be admitted free. "But this is rendered practically a dead letter, from the fact that the interior duties are levied on everything the immigrant has before he gets settled; and these are so heavy that immigration has been greatly discouraged. A carpenter, or other mechanic, who desires to get employment in Mexico, has such heavy duties levied on his tools on passing the national or State frontiers that few are willing or able to pay them. Hence, few American mechanics find their way into the country, unless in accordance with special contract."

The existence in a state of the New World of a system of taxation so antagonistic to all modern ideas, and so destructive of all commercial freedom, is certainly very curious, and prompts to the following reflections: First, how great were the wisdom and foresight of the framers of the Constitution of the United States in providing, at the very commencement of the Federal Union, that no power to tax in this manner, and for their own use or benefit, should ever be permitted to the States that might compose it (Article I, section 10). Second, how did such a system come to be ingrafted on Mexico? for it is not a modern contrivance. All are agreed that it is an old-time practice and a legacy of Spanish domination. But, further than this, may it not be another of those numerous relics of European mediævalism which, having utterly disappeared in the countries of their origin, seem to have become embalmed, as it were, in what were the old Spanish provinces of America—a system filtered down through Spanish traditions from the times when the imposition of taxes and the regulation of local trade were regarded by cities and communities in the light of an affirmation of their right to self-government, and as a barrier against feudal interference and tyranny; and when the idea of protecting industry through like devices was not limited as now, to international commerce, but was made applicable to the commercial intercourse of cities and communities of the same country, and even to separate trades or

“guilds” of the same city? Whether such speculations have any warrant in fact or not, it is at least certain that we have in the Mexico of to-day a perfect example of what was common in Europe in the middle ages; namely, of protection to separate interests (through taxation) carried out to its fullest and logical extent, and also of its commercial and industrial consequences.

So much for the tariff system of Mexico and its adjuncts. The “excise” or “internal revenue” system of the country is no less extraordinary. It is essentially a tax on sales, collected in great part through the agency of stamps, and is a repetition of the old “*alcavala*” tax of Spain, even to the extent of retaining its name slightly modified from *alcavala* to “*alcabala*”; and which Adam Smith, in his *Wealth of Nations*, describes as one of the worst forms of taxation that could be inflicted upon a country, and as largely responsible for the decay of Spanish manufactures and agriculture. Thus a Federal statute of Mexico, enacted in 1885, imposed a tax of “one half of one per cent upon the value in excess of twenty dollars of transactions of buying or selling of every kind of merchandise, whether at wholesale or retail, in whatever place throughout the whole republic.” Also, one half of one per cent “on all sales and resales of country or city property; upon all exchanges of movable or immovable property; on mortgages, transfers, or gifts, collateral or bequeathed inheritances; on bonds, rents of farms, when the rent exceeds two thousand dollars annually; and on all contracts with the Federal, State, or municipal governments.” Every inhabitant of the republic who sells goods to the value of over twenty dollars must give to the buyer “an invoice, note, or other document accrediting the purchase,” and affix to the same, and cancel, a stamp corresponding to the value of the sale. Sales at retail are exempt from this tax; and retail sales are defined to be “sales made with a single buyer, whose value does not exceed twenty dollars. The union, in a single invoice, of various parcels, one of which does not amount to twenty dollars, but which in the aggregate exceed that quantity,” remains subject to the tax. Retail sales in the public markets, or by ambulatory sellers, or licensed establishments whose capital does not exceed three hundred dollars, are also exempt. Tickets

of all descriptions—railroad, theatre, etc.—must have a stamp, as must each page of the reports of meetings, each leaf of a merchant's ledger, day or cash book, and every cigar sold singly, which must be delivered to the buyer in a stamped wrapper. Sales of imported spirits pay eight per cent on the duties levied on their importation, and a half of one per cent in addition when retailed. Domestic spirits pay three per cent when sold by producers or dealers at wholesale, and a half of one per cent additional when sold at retail. Gross receipts of city railroads pay four per cent; public amusements, two per cent upon the amount paid for entrance; playing cards, fifty per cent—paid in stamps—on the retail price; and manufactured tobacco a variety of taxes, proportioned to quality and value. Mercantile drafts are taxed at a dollar on every hundred.

Farms, *haciendas*, and town estates are required to be taxed at the rate of three dollars per each thousand dollars of the valuation, but such is the influence of the landowners that the valuation is almost nominal. In Vera Cruz the rate is reported at about two mills on the dollar for the most productive portions of country estates; while in the Pacific State of Colima the rate is said to be one and a half per cent. Land and buildings not actually producing income are exempt from taxation, notwithstanding they may be continually enhancing in value. This system of exempting unoccupied realty from taxation also prevails in Portugal; and the Mexican usage was probably derived from that country, where the theory in justification of the practice is, that the use of a thing defines its measure of value, and that to tax unused property is confiscation.

A recent Mexican statute for the taxation of land contains forty-seven different sections, each providing the ways and means of enforcing the tax and prescribing penalties for its infraction. In the towns and cities of Mexico this system of infinitesimal taxation is indefinitely repeated, the towns acting as collectors of revenue for the Federal and State governments, as well as for their own municipal requirements. All industries pay a monthly fee: As tanneries, fifty cents; soap factories, one dollar. So also all shops for the sale of goods pay according to



their class, from a few dollars down to a few cents per month. Each beef animal, on leaving a town, pays fifty cents; each fat pig, twenty-five cents; each sheep, twelve cents; each load of corn, fruit, vegetables, or charcoal, six cents (as a supposed road tax), and so on; and, on entering another town, all these exactions are repeated. A miller, in Mexico, it is said, is obliged to pay thirty-two separate taxes on his wheat before he can get it from the field and offer it, in the form of flour, on the market for consumption. As a matter of necessity, furthermore, every centre of population—small and big, city, town, or hamlet—swarms with petty officials, who are paid to see that not an item of agricultural produce, of manufactured goods, or an operation of trade or commerce or even a social event, like a *fandango*, a christening, a marriage, or a funeral, escapes the payment of tribute.

In fact, trade has been so hampered by this system of taxation that one can readily understand and accept the assertion that has been made, that people with capital in Mexico really dread to enter into business, and prefer to hoard their wealth, or restrict their investments to land (which, as before pointed out, is practically exempt from taxation), rather than subject themselves to the never-ending inquisitions and annoyances which are attendant upon almost every active employment of persons and capital, even were all other conditions favourable. Mexico, from the influence of this system of taxation alone, must, therefore, remain poor and undeveloped; and no argument to the contrary can in any degree weaken this assertion. Doubtless there are many intelligent people in Mexico who recognise the gravity of the situation, and are most anxious that something should be done in the way of reform. But what can be done? If autocratic powers were to be given to a trained financier, thoroughly versed in all the principles of taxation and of economic sciences, and conversant with the results of actual experience, the problem of making things speedily and radically better in this department of the Mexican state is so difficult that he might well shrink from grappling with it.

In the first place, the great mass of the Mexican people have little or no visible tangible property which is capable of direct assessment.

Again, in any permanent system of taxation, taxes in every country or community, in common with all the elements of the cost of production and subsistence—wages, profits, interest, depreciation, and materials—must be substantially drawn from each year's product. Now, the annual product of Mexico is comparatively very small. For example, the annual product of one of the least developed States of the Federal Union—South Carolina—was in 1888 absolutely two and a half times—or, proportionally to area, twenty-five times—as valuable as the then annual product of the entire northern half of Mexico; and the Argentine Republic of South America, with only one third the population of Mexico, has a revenue twenty per cent greater, and double the amount of foreign commerce. Product being small, consumption must of necessity be also small. “The average cost of living (food and drink) to a labouring man in the city of Mexico is about twenty-five cents per day; in the country, from twelve and a half to eighteen cents. The average annual cost of a man's dress is probably not over five dollars; that of a woman, double that sum, with an undetermined margin for gew-gaws and cheap jewelry.” Mr. Lambert, United States consul at San Blas, reported under date of May, 1884: “The average labourer and mechanic of this country may be fortunate enough, if luck be not too uncharitable toward him, to get a suit of tanned goatskin, costing him about six dollars, which will last him as many years.” Of household goods the mass of the Mexican people are almost destitute. A few untanned hides are used for beds, and dressed goat or sheep skins serve for mattress and covering.

The food of the masses consists mainly of agricultural products—corn (*tortillas*), beans (*frijoles*), and fruits—which are for the most part the direct results of the labour of the consumer, and not obtained through any mechanism of purchase or exchange.

Persons conversant with the foreign commerce of Mexico are also of the opinion that not more than five per cent of its population buy at the present time any imported article whatever, and that for all purposes of trade in American or European manufactures the consuming population is not much in excess of half a million. Revenue in

Mexico from any tariff on imports must therefore be limited, and this limitation is rendered much greater than it need be by absurdly high duties, which (as notably is the case of cheap cotton fabrics) enrich the smuggler and a few mill proprietors to the great detriment of the national exchequer.

It is clear, therefore, that the basis available to the Government for obtaining revenue through the taxation of articles of domestic consumption, either in the processes of production or through the machinery of distribution, is of necessity very narrow; and that if the state is to get anything, either directly or indirectly, from this source, there would really seem to be hardly any method open to it other than that of an infinitesimal, inquisitorial system of assessment and obstruction akin to what is already in existence.

But the greatest obstacle in the way of tax reform in Mexico is to be found in the fact that a comparatively few people—not six thousand out of a possible ten million—own all the land and constitute in the main the governing class of the country, and the influence of this class has thus far been sufficiently potent *practically* to exempt land from taxation. So long as this condition of things prevails it is difficult to see how there is ever going to be a middle class (as there is none now worthy of mention) occupying a position intermediate between the rich and a vast ignorant lower class that take no interest in public affairs, and is only kept from turbulence through military restraint. Such a class in every truly civilized and progressive country is numerically the largest, and comprising the great body of producers, consumers, and taxpayers, is the one most interested in the promotion and maintenance of good government. A tax policy, however, which would compel the landowners to cut up and sell their immense holdings, especially if they are unwilling to develop them, would be the first step toward the creation of such a middle class. But it is not unlikely that Mexico would have to go through one more revolution, worse than any she has yet experienced, before any such result could be accomplished. At present, furthermore, there is no evidence that the mass of the Mexican people, who would be most benefited by any wise scheme for the par-

tition of the great estates and for tax reform, feel any interest whatever in the matter or would vigorously support any leader of the upper class who might desire to take the initiative in promoting such changes; and herein is the greatest discouragement to every one who wishes well for the country.

In 1892, the present enlightened President of the Republic of Mexico, Porfirio Diaz, fully recognising the great obstruction to trade and commerce which the complicated system of internal taxation entailed upon the country, created a commission to report what was necessary to institute a better fiscal system. As a result of the labours of this commission the Federal Constitution was amended so as to provide for the total repeal of the internal taxes on trade, the *alcavalas*, and this radical change was accomplished July 1, 1896. The States, deprived by this measure of their income from merchandise coming into or passing through their territory, modified their tax systems, substituting for the abolished duties direct taxes. In January, 1898, the Secretary of the Treasury, José Ives Limantour, reviewing the financial operations of the year, stated that the receipts from these direct taxes had been very satisfactory, considering the difficulties generally encountered in the collection of a new tax. As the contributions from the States to the Federal Treasury had been intimately connected with the *alcavalas*, it was expected some heavy decrease would occur; but this deficiency amounted to less than thirty thousand dollars in the first year, and the prospect of further deficits was not encouraged. The abolition of the vexatious *alcavalas* has resulted in a greater commercial activity.

## CHAPTER VI.

### TAXATION IN EGYPT AND BRAZIL.

**TAXATION IN EGYPT.**—Herodotus, the Father of History, in writing more than two thousand years ago about Egypt, characterized it as a land of wonders, “containing more marvellous things than any other country,” and in this opinion the judgment of succeeding ages, finding an all-sufficient warrant in primeval, stupendous, and mysterious monuments, has been compelled, as it were, fully to acquiesce. At this latter day, however, there has been added to Egyptian history what may be rightfully termed another wonder, namely, the most interesting and instructive experience in taxation in the world’s history. Interesting and instructive because it affords striking and almost unprecedented illustrations of the results contingent on an arbitrary and unintelligent treatment of a heavy annual requirement of revenue for the support of a state, as contrasted with the results which have been the sequence of a wise and practical policy for a like purpose in the same country and under similar conditions.

Previous to the military occupation of Egypt by the British forces in 1882, consequent upon the suppression of the rebellion under the lead of Arabi Pasha, the condition of the country was wretched almost beyond conception. Its revenue system, in accordance with Asiatic ideas, comprehended nearly every form of iniquitous extortion. The principal source of revenue was essentially in the nature of a land tax; and for the dusky fellah, who represents the bulk of the Egyptian population, and who, with a grimy white shirt girded about his loins, ploughs, sows, and reaps to-day as his forefathers have done before him for thousands and thousands of years, this tax meant that his houses, his cattle, and his lands “were but so much food placed before the lips of our lord (the Khedive) that he might eat thereof and have his fill.”

“The seed was often barely sown for the coming crop before the tax-gatherer appeared with the usurer as his familiar spirit at his heels, claiming not only heavy tithes of the treasury, but the many tithes of those tithes which never reached the treasury, waylaid on the road along the steep ascending gradients of a predatory hierarchy. For what purposes or to what amount he could be mulcted the fellah had no means of knowing. The only record he kept was the number of strokes from the *koorbash* which had wrung from him his last piastre. The only certainty he acquired by long and bitter experience was that, let his harvest be good or bad, only so much would be left to him as would barely suffice to keep body and soul together. Every year brought fresh imposts, and every new tax became in the hands of a corrupt administration a fresh pretext for unlawful exactions. To satisfy them the land was made to yield more frequent and more valuable but also more exhausting crops, until the soil itself caught the contagion of universal impoverishment. Still, the arrears of taxation grew, and with them arrears of private indebtedness,” until at last whole villages not infrequently petitioned the pasha “to accept the fee simple of their lands on condition merely that they should be allowed to rent them from him at an annual rental greater than the land tax itself, but still vastly less than the total amount of illegitimate imposts grafted on to the land tax.”

Extortion for the purpose of obtaining revenue for the state, and plunder for the officials intrusted with its collection, was not the only form of oppression to which the miserable Egyptian peasantry were subjected. By an ancient Asiatic institution called the *corvée*, the fellah was liable at any moment to be seized and dragged perhaps off to some distant part of the country to work under constant dread of the taskmaster's whip at any task suggested by the caprice of the Khedive or some powerful pasha; and it was under this system of compulsory, unpaid, severe, unfed labour, and with great attendant sacrifice of the lives of his subjects, that the then Khedive, Ismail Pasha, mainly built the Suez Canal. In addition there was a system of “military conscription invested with the terrors of the press-gang; there was the water supply for irrigation, generally inadequate and often dependent upon the

caprice of some local magistrate or corrupt official; there was the greed of unjust judges; there was the whole hungry bureaucracy, feeding upon those beneath it in order that it might in turn feed those above it."

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The career of Ismail Pasha, who as Khedive ruled over Egypt from 1863 to 1879, was a remarkable one. He was "as fine a type of the spendthrift as can well be found, whether in history or fiction. No equally reckless prodigal ever possessed equally unlimited control of equally vast resources. He came to the throne at a moment when there seemed to be no limit to the potential wealth of Egypt. The whole land was his, to do what he liked with it. The world was ready to lend money to develop it." The results of his government may be rightfully characterized from almost every point of view as appalling. When he commenced to rule in 1863 "the debt of Egypt was a little over £3,000,000 sterling (\$15,000,000). The annual revenue of the country was amply sufficient to meet all needful expenditure. Yet at the end of 1876 the debt had risen to £89,000,000 (\$445,000,000). A country of six million inhabitants and only five million acres of cultivated land had added to its burdens at the rate of £7,000,000 (\$35,000,000) a year. At the same time the taxation of land had been increased by something like fifty per cent. There is nothing in the fiscal history of any country, from the remotest ages to the present time, equal to this carnival of extravagance and oppression."

The revenue annually collected under Ismail Pasha is probably not accurately known, and has been reported as high as £15,000,000 (\$75,000,000), from an estimated population in 1872 of 5,203,000. But, whatever the amount, it is certain that a very considerable portion of what was wrung from the miserable peasantry never found its way into any official ledger, or reached the national treasury. Of a great loan of £32,000,000 effected by the Khedive in 1873, only £20,700,000 reached the Egyptian treasury. The total amount sunk by the Government in the Suez Canal is estimated at £16,075,000 (\$80,375,000). Yet Egypt has no share in the vast profits of the undertaking. It was not, however, the amount of taxation, crushing as it was in many cases, which worked the greatest mischief. "It was, above all, the cruel and arbitrary

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That some betterment of such a condition of affairs was imperative if civilization was to be maintained and the substantial dissolution of Egyptian society prevented, seemed evident, and to effect it most rationally and speedily an experiment was instituted that, as respects its nature and results, finds no parallel in the world's history. This in brief was the creation of a fiscal commission, by Sir Evelyn Baring, then British agent and consul general in Egypt (but now Lord Cromer, minister plenipotentiary), the members of which were selected solely by reason of their recognised qualifications for the work in hand and invested with almost autocratic powers. To this commission was intrusted the task of examining and reconstructing a revenue system of long duration and fortified by the precedents, customs, and prejudices of an entire country, with a not inconsiderable population. The commission when organized in 1884-'85 entered upon its work under

exceedingly unfavourable circumstances. The financial pressure was most acute. The magnitude of the national debt was apparently overwhelming; and the prices of the leading agricultural staples of the country, depressed in an extraordinary degree by world-wide competition, consequent upon improved conditions of production and transportation, seemed to preclude all possibility of obtaining any increased revenues from the masses by a continuance of the old, or even by any new methods of extortion. The first step taken was to abolish as rapidly and as far as possible all unnecessary and unproductive expenditures; and for this there was large opportunity. A diminution was made in the pension list, and in the number of superfluous and highly paid officials. By the concurrent action of the great powers of Europe the rate of interest on the funded debt of Egypt was also somewhat reduced.

The next important measure that claimed the attention of the commission was the grievance of the *corvée*, or system of enforced labour on the part of the peasantry on the public works; which, if entitled to be called taxation, was taxation of the worst and most wasteful kind, entailing sacrifices upon the people out of all proportion to the money which it saved to the state. It was not, however, found practical at the outset to abolish it altogether. The old practice by which the fellahs might be dragged away from their villages at any moment for any purpose, public or private, upon which the Khedive might choose to employ them, was at once totally abrogated. On the other hand, the agriculture of Egypt, the main source of support of her people, depends upon the water of the Nile, distributed through irrigating ditches or canals; and in order that these should fulfil their purpose, it is necessary to keep them clear of the mud which the Nile at the period of its annual overflow brings down in large quantities; and to effect this, no other labour than that of the fellahs is available. Finding that this indispensable work could be done by contract and paid labour, for about £400,000 (\$2,000,000) per annum, the commission appropriated, from the funds made available from loans and the reduced expenses of the Government, the sum of £250,000, to be paid annually as compensation for such

service, and thereby at once reduced by more than fifty per cent the number of men formerly called out and compelled to perform service, without payment. In addition, the employment of skilled engineers and the introduction of improved machinery for dredging and excavating, still further reduced both the necessity for the labour of individuals and the general aggregate of former expenditures. Whatever of the obligation of the *corvée* is still incumbent on the fellah, as, for example, when he is called in any sudden emergency to prevent breaks in embankments in time of flood, or keep clear the irrigation of his own land, is therefore largely in his own interest, and even this will probably at no distant day be abolished. But, be this as it may, it is certain that what of the *corvée* the commission has felt compelled to retain does not represent one tithe of the awful incubus which the old *corvée* represented "in the days of the oppression." The use of the *koorbash*, or lash, which was the former invariable accompaniment of unpaid labour in Egypt, has also been absolutely prohibited. Of other forms of relief to the people of Egypt, effected by the English fiscal commission, the following may be mentioned:

An abandonment of a tax on sheep, goats, and camels, which was very obnoxious to the agriculturists; a tax on weighing and measuring; *octroi* taxes on rice, oil, and other commodities; and a tax on all trades and crafts, in the nature of licenses on business and professions, which was collected in innumerable small sums from the poorest of the people. The price of salt, the supply and sale of which was a monopoly of the state, has been reduced to the extent of forty per cent, while large abatements have been made in judicial fees, postal and telegraph rates, and in railway rates and fares.

As formerly, the tax on land is yet the corner stone of Egyptian finance, and can not be rapidly or radically disturbed; but large measures of relief have nevertheless been instituted. A vexatious diversity of rates at which land has been assessed in different parts of the country has been simplified to the extent that a former total number of fourteen hundred different rates has been brought down to two hundred. The value of land varies greatly, according to its proximity to the Nile, and the extent to which

Again, in any permanent system of taxation, taxes in every country or community, in common with all the elements of the cost of production and subsistence—wages, profits, interest, depreciation, and materials—must be substantially drawn from each year's product. Now, the annual product of Mexico is comparatively very small. For example, the annual product of one of the least developed States of the Federal Union—South Carolina—was in 1888 absolutely two and a half times—or, proportionally to area, twenty-five times—as valuable as the then annual product of the entire northern half of Mexico; and the Argentine Republic of South America, with only one third the population of Mexico, has a revenue twenty per cent greater, and double the amount of foreign commerce. Product being small, consumption must of necessity be also small. "The average cost of living (food and drink) to a labouring man in the city of Mexico is about twenty-five cents per day; in the country, from twelve and a half to eighteen cents. The average annual cost of a man's dress is probably not over five dollars; that of a woman, double that sum, with an undetermined margin for gew-gaws and cheap jewelry." Mr. Lambert, United States consul at San Blas, reported under date of May, 1884: "The average labourer and mechanic of this country may be fortunate enough, if luck be not too uncharitable toward him, to get a suit of tanned goatskin, costing him about six dollars, which will last him as many years." Of household goods the mass of the Mexican people are almost destitute. A few untanned hides are used for beds, and dressed goat or sheep skins serve for mattress and covering.

The food of the masses consists mainly of agricultural products—corn (*tortillas*), beans (*frijoles*), and fruits—which are for the most part the direct results of the labour of the consumer, and not obtained through any mechanism of purchase or exchange.

Persons conversant with the foreign commerce of Mexico are also of the opinion that not more than five per cent of its population buy at the present time any imported article whatever, and that for all purposes of trade in American or European manufactures the consuming population is not much in excess of half a million. Revenue in

Mexico from any tariff on imports must therefore be limited, and this limitation is rendered much greater than it need be by absurdly high duties, which (as notably is the case of cheap cotton fabrics) enrich the smuggler and a few mill proprietors to the great detriment of the national exchequer.

It is clear, therefore, that the basis available to the Government for obtaining revenue through the taxation of articles of domestic consumption, either in the processes of production or through the machinery of distribution, is of necessity very narrow; and that if the state is to get anything, either directly or indirectly, from this source, there would really seem to be hardly any method open to it other than that of an infinitesimal, inquisitorial system of assessment and obstruction akin to what is already in existence.

But the greatest obstacle in the way of tax reform in Mexico is to be found in the fact that a comparatively few people—not six thousand out of a possible ten million—own all the land and constitute in the main the governing class of the country, and the influence of this class has thus far been sufficiently potent *practically* to exempt land from taxation. So long as this condition of things prevails it is difficult to see how there is ever going to be a middle class (as there is none now worthy of mention) occupying a position intermediate between the rich and a vast ignorant lower class that take no interest in public affairs, and is only kept from turbulence through military restraint. Such a class in every truly civilized and progressive country is numerically the largest, and comprising the great body of producers, consumers, and taxpayers, is the one most interested in the promotion and maintenance of good government. A tax policy, however, which would compel the landowners to cut up and sell their immense holdings, especially if they are unwilling to develop them, would be the first step toward the creation of such a middle class. But it is not unlikely that Mexico would have to go through one more revolution, worse than any she has yet experienced, before any such result could be accomplished. At present, furthermore, there is no evidence that the mass of the Mexican people, who would be most benefited by any wise scheme for the par-

tition of the great estates and for tax reform, feel any interest whatever in the matter or would vigorously support any leader of the upper class who might desire to take the initiative in promoting such changes; and herein is the greatest discouragement to every one who wishes well for the country.

In 1892, the present enlightened President of the Republic of Mexico, Porfirio Diaz, fully recognising the great obstruction to trade and commerce which the complicated system of internal taxation entailed upon the country, created a commission to report what was necessary to institute a better fiscal system. As a result of the labours of this commission the Federal Constitution was amended so as to provide for the total repeal of the internal taxes on trade, the *alcavalas*, and this radical change was accomplished July 1, 1896. The States, deprived by this measure of their income from merchandise coming into or passing through their territory, modified their tax systems, substituting for the abolished duties direct taxes. In January, 1898, the Secretary of the Treasury, José Ives Limantour, reviewing the financial operations of the year, stated that the receipts from these direct taxes had been very satisfactory, considering the difficulties generally encountered in the collection of a new tax. As the contributions from the States to the Federal Treasury had been intimately connected with the *alcavalas*, it was expected some heavy decrease would occur; but this deficiency amounted to less than thirty thousand dollars in the first year, and the prospect of further deficits was not encouraged. The abolition of the vexatious *alcavalas* has resulted in a greater commercial activity.

## CHAPTER VI.

### TAXATION IN EGYPT AND BRAZIL.

**TAXATION IN EGYPT.**—Herodotus, the Father of History, in writing more than two thousand years ago about Egypt, characterized it as a land of wonders, “containing more marvellous things than any other country,” and in this opinion the judgment of succeeding ages, finding an all-sufficient warrant in primeval, stupendous, and mysterious monuments, has been compelled, as it were, fully to acquiesce. At this latter day, however, there has been added to Egyptian history what may be rightfully termed another wonder, namely, the most interesting and instructive experience in taxation in the world’s history. Interesting and instructive because it affords striking and almost unprecedented illustrations of the results contingent on an arbitrary and unintelligent treatment of a heavy annual requirement of revenue for the support of a state, as contrasted with the results which have been the sequence of a wise and practical policy for a like purpose in the same country and under similar conditions.

Previous to the military occupation of Egypt by the British forces in 1882, consequent upon the suppression of the rebellion under the lead of Arabi Pasha, the condition of the country was wretched almost beyond conception. Its revenue system, in accordance with Asiatic ideas, comprehended nearly every form of iniquitous extortion. The principal source of revenue was essentially in the nature of a land tax; and for the dusky fellah, who represents the bulk of the Egyptian population, and who, with a grimy white shirt girded about his loins, ploughs, sows, and reaps to-day as his forefathers have done before him for thousands and thousands of years, this tax meant that his houses, his cattle, and his lands “were but so much food placed before the lips of our lord (the Khedive) that he might eat thereof and have his fill.”

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Extortion for the purpose of obtaining revenue for the state, and plunder for the officials intrusted with its collection, was not the only form of oppression to which the miserable Egyptian peasantry were subjected. By an ancient Asiatic institution called the *corvée*, the fellah was liable at any moment to be seized and dragged perhaps off to some distant part of the country to work under constant dread of the taskmaster's whip at any task suggested by the caprice of the Khedive or some powerful pasha; and it was under this system of compulsory, unpaid, severe, unfed labour, and with great attendant sacrifice of the lives of his subjects, that the then Khedive, Ismail Pasha, mainly built the Suez Canal. In addition there was a system of “military conscription invested with the terrors of the press-gang; there was the water supply for irrigation, generally inadequate and often dependent upon the



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results of labour at the periods of price comparisons, and that the *real* cost of producing the staple commodities of the United States, or the effort needed to produce a given amount of general merchandise, or the number of days' work put into each piece of such merchandise, has on an average decreased during these periods more than their market prices have decreased, so that instead of the decline in the prices of commodities under consideration having increased the burden upon labour of national and other debts created before such decline, the burden has been lessened to just the extent that the average cost of producing commodities has declined to a greater degree than their average market prices. Thus all authorities are substantially agreed that there are few departments of industrial effort in which the saving of time and work in the twenty to thirty years next anterior to 1890 was at least forty per cent, and in not a few instances has been much greater (in the manufacture of boots and shoes, for example, eighty per cent). In North Carolina the relative increase in cotton product and population from 1870 to 1880 was as 4.5 to 1. With slight changes in the relation of labour to product, the cotton crop of the United States increased seventy-six per cent between the years 1866 and 1872, and forty-nine per cent between 1872 and 1886. Recent investigations have shown, in the case of certain leading articles in hardware, that a given quantity which represented a labour cost in 1870 of a million dollars could be afforded in 1894 for a like cost of \$444,444. Another striking illustration of the present cheapness of manufactured articles per unit and as measured in terms of labour payments per hour or day, compared with former recent periods, and as the result of present industrial conditions, is found in the statement that wire nails are now so cheap that, if a carpenter drops a nail, it is cheaper to let it lie than take time to pick it up; and the correctness of which has been demonstrated as follows: "Assuming that it takes a carpenter ten seconds to pick up a nail which he has dropped, and that his time is worth thirty cents per hour, the recovery of the dropped nail would cost 0.083 cent. There are two hundred sixpenny nails in a pound, and they are worth on an average 1.55 cent per pound, making the value of one nail 0.0077 cent. In other

words, it would not pay to pick up ten nails at the assumed loss of time and rate of pay of the carpenter."

On the other hand, wages have increased in the United States since 1870 in an approximative ratio with the increase in the effectiveness of labour in producing commodities, and touched the highest point ever known about the year 1890. During the same period debtors have gained greatly by the decrease in the cost of living, and a consequently increased opportunity for laying up a surplus for meeting tax demands and other purposes. The assumption that the comparatively recent fall in the price of commodities in the United States has increased the burden of taxation upon its people, therefore merits the characterization of being one of the most irrational and fictitious of popular economic fallacies.

## CHAPTER X.

### RELATION OF TAXATION TO THE STATE.

THE next step of importance in this discussion is to recognise clearly the relation which the exercise or function of taxation, as it has been defined, sustains to the state.

ORIGIN AND JUSTIFICATION OF TAXATION.—The question at once suggests itself, “By what right does that *entity* which we call the state, whatever may be its concrete form, and whether its powers are exercised by a single man (Cæsar), by a particular class, or by a majority of citizens, take from the individual that which hitherto was absolutely his, annul his ownership, and convert the thing of value to its own use?” \* How happens it that the exercise of this right is so absolute that the state requires the citizen to set apart from the earnings of his labour a certain sum for its use before he applies any of those earnings to the support of his family? †

On this point there has been considerable speculation and philosophizing. It has been assumed that there must be an actual or implied contract between the state and the citizen, in virtue of which the state supplied a certain amount of protection to life and property, and for which the citizen in return pays an equivalent in money, mer-

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\* “Titius is to render to Cæsar that which is Cæsar’s. But when Cæsar comes to take the shock of wheat or the firstling of the flock Titius may well ask, as he gives them up: Why are they Cæsar’s rather than mine? What right to them has Cæsar and not my neighbour Mævius?” *Tyranny in Taxation.* Theodore Bacon. *New-Englander*, 1867.

† The probate judiciary of the State of Connecticut has recently held that in the settlement of insolvent estates taxes due prior to the assignment of an assigning debtor should be regarded as preferred claims, and as such should be paid in full by the trustee.

chandise, or personal service. There is, however, no historical example of any such contract.

Others have sought to refer the origin of this right on the part of the state to take the property of the citizen to an antecedent right of might, and have assumed that, as the ruling power, whether monarch or majority, is physically able to take and apply to its own use all that the individuals ruled over may call their own, it is therefore legitimate and morally correct for it to exercise this right and take such part of its subjects' property as it may see fit.

A *third* and more plausible theory is, that as all rights of property are conventional and not natural, and without the intervention of the state by its laws could not be enforced or protected, and, indeed, could hardly be said to exist; therefore the state is the source of all title, and the individual holds only by grant or sufferance of the state. From these premises it follows that the state, in compelling contributions from its subjects, or, as is ordinarily expressed, in "taxing," is in the position of an absolute proprietor who takes simply what is his own. This was the theory accepted and practically carried out by all the monarchs of Europe in the seventeenth century, or about two hundred and fifty years ago, and defended by the best and most eminent men of the time, as Bossuet in France and most of the great jurists of England under Charles I, as was exemplified in the case of John Hampden, who was prosecuted for refusing to pay an arbitrary tax known as "ship money"; and the decision in which, by the High Court of Exchequer, placed the property of every Englishman at the disposal of the crown. It was also so clearly expressed by Louis XIV that his words are worthy of exact citation. Thus, in a manual which he wrote for the guidance of his heir and successor, the Dauphin, he says: "I hold the place of God. To me belong exclusively the lives and fortunes of my people. The nation resides entirely in the person of the monarch. Kings are absolute masters, and may naturally, fully, and freely dispose of all the property possessed by either the clergy or laity, to use at all times like wise stewards and according to the needs of the state."

Herbert Spencer refers the growth of revenue, which involves the right to take it, from the outset, like the

growth of political headship which it accompanies, directly or indirectly, to the results of war. "The property," he says, "of conquered enemies—at first goods, cattle, prisoners, and at a later stage land—coming in larger share to the leading warrior, increases his predominance. To secure his good will, which it is now important to do, propitiatory presents and help in labour are given; and these, as his power further grows, become periodic and compulsory. Making him more despotic at the same time that it augments his kingdom, continuance of this process increases his ability to enforce contributions, alike from his original subjects and from tributaries; while the necessity for supplies, now to defend his kingdoms, now to invade adjacent kingdoms, is ever made the plea for increasing his demands of established kinds and for making new ones. Under stress of the alleged needs, portions of their goods are taken from subjects whenever they are exposed to view for purpose of exchange. And as the primitive presents of property and labour, once voluntary and variable, but becoming compulsory and periodic, are eventually commuted into direct taxes; so those portions of the trader's goods which were originally given for permission to trade, and then seized as of right, come eventually to be transformed into percentages of value paid as tolls and duties. But to the last as at first, and under free governments as under despotic ones, war continues to be the usual reason for imposing new taxes or increasing old ones; at the same time that the coercive organization in past times developed by war, continues to be the means of exacting them." \* Mr. Spencer further asserts that "in the early stages of social evolution nothing answering to revenue exists." These conclusions of Mr. Spencer seem, however, to be singularly imperfect, inasmuch as they do not appear to recognise that there can be such things as voluntary or beneficial taxes, or that society in order to exist would in the course of time institute taxation, even if there had been no war. He does, however, recognise that the increasing progress and complexity of civilization, by

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\* Abundant illustrations from historical or recent experiences of the successive stages of such assumed evolution of taxation are given by Mr. Spencer in the chapter On Revenue in his *Political Institutions, Principles of Sociology*, vol. ii, p. 557.



continually enlarging its sphere and functions, would continually necessitate an increase of taxation.

All such speculations and theories as to the origin and sphere of the rights of government in respect to appropriating the property of its subjects or citizens, although of philosophic interest, are, however, of little practical importance.\* It is only necessary to recognise that in some form the organization or entity which we call the state exists for certain definite purposes, even though they be difficult of precise limitation; and to analyze the situation, as we find it, to obtain a satisfactory answer to the question at issue. For the command of a constant and adequate revenue being beyond dispute absolutely essential to the existence of organized government, the power to compel or enforce contributions from the people governed, or, as it is termed, "to tax," is inherent in and an incident of every sovereignty, and rests upon necessity.† The question of the obtaining of such revenue obviously, therefore, is the question of first importance in the economy of a state; the one in comparison with which all others are subordinate. For without revenue (and a government never has any resources except what it has obtained from the people), regularly

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\* Edmund Burke, the great Irish statesman, is on record as characterizing any discussion of the abstract right of taxation in place of the actual facts of the situation, as belonging to the domain of political metaphysics, "a great Serbonian bog in which armies whole have sunk," and that it was by fighting for such "a phantom, a quiddity, a theory that wants not only a substance but even a name," that English statesmen threw away their American colonies.

† "When we ask, What right has the state to infringe upon man's natural freedom? we are involved in the difficulty that there are no rights, in the strict sense of the term, antecedent to the state. All rights that we know anything about are either legal or moral. The right of the state to govern man can not be derived from law, for law is the creature of the state. If it is a moral right, it must rest on the same basis on which all morality rests, and this must be either conscience, or divine revelation, or utility. Of course, consent has nothing to do with morality. Conscience, furthermore, will not do as a basis for the state, for conscience does not enlighten us further than to let us know that we ought to obey the state if it is right to do so. Revelation, also, answered only so long as a direct and miraculous connection was believed to exist between human and divine authority. This leaves nothing but utility as the basis for the moral right of the state to interfere with man's natural freedom."—*Anonymous*.

and uniformly obtainable, no governmental machinery for the protection of life and property, through the dispensing of justice and the providing for the common defence, could long be maintained; and in default thereof production would stop or be reduced to a minimum, accumulations would cease or become speedily exhausted, and civilization would inevitably give place to barbarism and the wilderness. For like reasons also, or as the old-time Latin maxim, "*salus populi suprema lex*," concretely expresses it, the state holds command over the lives and liberties of its citizens equally as it does over their fortunes. In fact, the sovereignty of a state consists and exemplifies itself in the power to abridge the liberty of the individual citizen and to take his property; and the character of every government is mainly determined by the intent and purpose for which these two great functions from which all its force proceeds are exercised.

THE SPHERE OF TAXATION.—The sequence of these premises is no less important, or rather of transcendent importance; for if the power of taxation is an incident of sovereignty, as it confessedly is, then the *right to exercise that power must be coextensive with that of which it is the incident*; or, in other words, as the power of every complete sovereignty over the persons and property of its subjects is unlimited, the power, therefore, in every such sovereignty to compel contributions for the service of the state, or, as we term it, "*to tax*," must be unrestricted. "The power to tax is therefore the strongest and most pervading of all the powers of government, reaching directly or indirectly to all classes." \*

The power to tax, said Chief-Justice Marshall, in giving the opinion of the United States Supreme Court denying the right of Maryland to tax the Bank of the United States (*McCulloch vs. Maryland*, 4 Wheaton, pp. 316-431), "involves the power to destroy, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it." In the case of *Weston vs. the City of Charleston*, the same court, by the same eminent authority, also

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\* United States Supreme Court; *Loan Association vs. Topeka*, 20 Wallace, 655.

held that "*if the right to impose a tax exists, it is a right which, in its nature, acknowledges no limits. It may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of such State or corporation may prescribe.*" And in a more recent case (*Loan Association vs. Topeka*, 20 Wallace) the court, through the late Justice Miller, again expressed itself to the same effect as follows: "Given a purpose or object for which taxation may be lawfully used, and the extent of its exercise is in its very nature unlimited."

The government of a complete sovereignty can therefore tax all that it can lay hands on to enforce the tax—men, women, and children; all property and business—and the power may be exercised again and again until the subject taxed is exhausted or the privilege can be no longer exercised. This statement finds abundant illustration in history of people absolutely impoverished by taxation, and of individuals who have been sold into slavery because of their inability to pay the taxes that the state or ruling power had assessed upon them. The popular idea is that such examples of the extreme exercise of power on the part of the state to compel contributions have passed into history; but this is not the case. In every purely despotic Government there is no limitation on its exercise except such as arises from the inability of the subject to contribute. The head of the state—shah, czar, or emperor—decides how much shall be exacted and the time and manner of exaction; and not infrequently the amount taken is only a little short of what is necessary to leave to the producer in order to enable him to maintain a mere animal existence. Thus in Russia the present governmental exaction—under the name of taxes—from the agricultural peasant is understood to amount to about forty-five per cent of his annual product or earnings.

In 1890 the excise taxation of Russia—which is mainly levied upon distilled spirits and other alcoholic drinks, tobacco, sugar, kerosene, and matches—is reported to have amounted to seventy-five per cent of the value of the articles taxed. On the other hand, the Russian customs duties in the same year averaged but thirty-four per cent of the import value of the foreign goods imported—a circumstance that may find an explanation in the fact that a large

proportion of the imports of Russia is in the nature of machinery or crude materials for industrial use or elaboration, and apart from this the requirements of the masses in Russia for foreign products are comparatively small.

In Egypt until quite recently, as has been already shown, the annual exactions from its peasantry—the fellahs—under the name of taxation produced an extremity of want which closely bordered on starvation.

In Italy, which in ancient times was regarded, as it is in fact to-day, potentially the richest country in Europe, and although its present Government can not fairly be characterized as despotic, its agriculture is burdened with state exactions that are reported as absorbing from one third to one half of the value of its annual product. The existing debt of the country, created largely by enormous military and naval expenditures, entails an annual interest charge of about \$3.75 per head of its population.\*

Another disastrous interference with the prosperity of the state is the system of taxing all business enterprises, after they have been established three years, at rates which

\* A national tax on movable (personal) property—the *ricchezza mobile*—is levied on the poorest of the Italian people; and often the bed has to be sold or the saucepans pawned to pay it.

The gate tax, *dazio consumo*, best known to English ears as *octroi*, which has been the especial object of the Sicilian fury, is a curse to the whole land. Nothing can pass the gates of any city or town without paying this odious and inquisitorial impost. Strings of cattle and of carts wait outside from midnight to morning, the poor beasts lying down in the winter mud and summer dust. Half the life of the country people is consumed in this senseless, cruel stoppage and struggle at the gates; a poor old woman can not take an egg her hen has laid, or a bit of spinning she has done, through the gates without paying for them. The wretched live poultry wait half a day and a whole night cooped up in stifling crates or hung neck downward in a bunch on a nail; the oxen and calves are kept without food three or four days before their passage through the gates, that they may weigh less when put in the scales. By this insensate method of taxation all the food taken into the cities and towns is deteriorated. The prating and interfering officers of hygiene do not attend to this, the greatest danger of all to health—that is, inflamed and injured animal and fowl carcasses sent into the markets. The municipalities exact the last centime from their prey; whole families are ruined and disappear through the exactions of their communes, who persist in squeezing what is already drained dry as a bone.—*The Italy of To-day*, in *Fortnightly Review*, February, 1894, p. 230.

in some cases swamp the profits. And in addition to such disturbing elements there is undoubtedly an all-pervading evasion for a consideration of all forms of taxation by the functionaries whose business it is to collect the revenue. A very general feeling, therefore, naturally prevails that it is a laudable thing to cheat or rather rob the Government whenever opportunity offers.\*

A more recent instance of excessive taxation is to be found in the island of Cuba, where the exactions of government and the known dishonesty attending their collection drove the planters into revolt. The low price of sugar in the markets of the United States made it impossible to endure demands that were easily met when the profits of sugar planting were large.

LIMITATIONS IN THE SPHERE OF TAXATION.—Attention is next asked to the fact that the foregoing proposi-

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\* It is enough to see how railways are built by the Government of Italy to form an idea of the openings afforded for rascality and fraud in their construction. "They are not built by contract, but on estimate. A building company estimates that a certain line will cost a certain sum and receives the job, which is always indeed a 'job.' The Government guarantees a certain income per kilometre, and the constructor makes the road as long as possible; but when the grant (which is made in bonds of the state) for the amount authorized is exhausted, the constructor coolly tells the ministry that the road must stop there unless the ministry makes another grant, which is of course done, and the invariable result is that the original estimate is nearly, or quite, or even more than doubled; with the consequence that none of the roads, as they are made, ever pay their expenses and interest on their cost of construction. More than that, they are so burdened with deadheads that it is estimated that only forty per cent of the passengers they carry pay full fare, the remaining sixty per cent paying from nothing up to seventy-five per cent of the fare. Deputies and senators travel free everywhere in the kingdom, but as the state pays a block sum for their privilege, it is not a dead loss, though, as every deputy who travels insists on having a whole compartment for himself, the road becomes anything but a profitable one. Every employee of the great systems of Italian railways has the right to make three journeys a year on each one, where he likes, and with his family, and the consequence is that some of them ruin themselves taking long railway journeys for which they have not the money to pay the expenses. And they are sixty thousand, with as many more pensioned off who have the same privilege; and, as all travellers know, the railway fare is the smallest part of the expense of a journey."—*New York Nation*, June 25, 1896.

tions respecting the unlimited power of a state to compel contributions, or to tax, and which (as shown) have received the sanction of the highest judicial authorities, are predicated on the assumption of *complete* sovereignty on the part of the state. But in a truly free state such sovereignty does not exist, and the conditions which make it free necessarily preclude its existence. Thus in every such state the two great functions which constitute its sovereignty, namely, the right to interfere with the liberty of the citizen and with his property, have been called into existence and can be rightfully exercised for certain purposes only, which admit of precise definition. In such a state *the fundamental and essential purpose of government is not to abridge the liberty of the individual citizen in respect to his person, or his possession and use of property, but to increase it*; and this result (overlooked in a great degree by economists and legislators), as has already been pointed out, can only be attained by taking a part of the property of the citizen which the existence of the state has enabled him to acquire, for the purpose of maintaining instrumentalities for preventing any encroachment upon his rightful liberty and punishing those who attempt it. In fact, in every free state there are limitations on the exercise of the taxing power, growing out of the structure of its government, or because it is free; or, as Chief-Justice Marshall expressed it, "by the implied reservations of individual rights growing out of the nature of a free government, and the maintenance of which is essential to its existence."

From the first dawn among the Anglo-Saxon race of the idea of a constitutional or free government, the necessity of establishing an inhibition on the power of government, in respect to the taking of property, was recognised; expressed or implied in the *Magna Charta*, and subsequently incorporated in the Federal Constitution, through its provisions respecting the equality of taxation, and that private property shall under no circumstances be taken for public uses without just compensation.

The necessity of a free state may, however, be so great—i. e., in the prosecution of war for national defence, or the maintenance of national existence—as to require that the entire resources of its people should be at the disposal

of the Government, and compel a resort to taxation, even to the exhaustion of everything—property and business—which may be its objective; and in this sense—i. e., for the preservation of individual liberty and property—and in this sense only, is involved any inherent power or right in taxation to destroy. The nature of the principle involved also finds illustration in the circumstance that municipal authorities are warranted, in the case of extensive conflagrations, in absolutely destroying large amounts of property in the shape of buildings and their contents, in order to preserve a much larger amount of like property from destruction. The principle under discussion would not accordingly justify the use of taxation in time of peace (as has been exercised by the Federal Government of the United States) for the primary purpose of destruction, and not for revenue or the preservation of property. Clearly, if this right of taxation is unlimited, the property of every citizen would be subject to the absolute disposition and control of the depositary of power in the state for the time being; and the recognition or non-recognition of such limitation marks, as before pointed out, more than any other one thing, the dividing line between a free government and a despotism.\*

Probably the most weighty and concrete judicial opinion on this subject was that given by the Supreme Court of the United States in 1874 in the now celebrated case of the *Loan Association vs. Topeka*, 20 Wallace, in which the late Justice Miller, with the substantial concurrence of his associates, indorsed and amplified the opinion of Chief-

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\* "The dictum of Chief-Justice Marshall, used by this distinguished jurist in the heat of argument, has been adopted by many courts as justifying the uncontrolled exercise of the taxing power. A slight consideration will not justify the dictum. The proposition that the power to tax is the power to destroy is in opposition to the fundamental principles of a free government. It asserts the broad doctrine that the power to tax, one of the legislative powers, is unlimited and arbitrary. It is claimed that there is no such thing as arbitrary power in this country: that the form of government being republican, those who exercise the powers of government, whether executive, legislative, or judicial, are clothed with a trust which is not to be executed in accordance with a mere whim, or in an arbitrary manner, but according to the purpose of its creation."—*Burroughs's Law of Taxation*, 1877.



Justice Marshall touching the reservation of individual rights under a free government as follows:

"It must be conceded," he said, "that there are rights in every free government beyond the control of the state. A government which recognised no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unbounded control of even the most democratic depository of power, is after all but a despotism. The theory of our governments, State and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers. There are limitations of such powers which grow out of the essential nature of all free governments—implied reservations of individual rights, without which the social compact could not exist, which are respected by all governments entitled to the name. . . . Of all the powers conferred upon the Government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used, and the extent of its exercise is in its very nature unlimited. This power can as readily be employed against one class of individuals and in favour of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there are no implied limitations of the uses for which the power may be exercised. *To lay with one hand the power of the Government on the property of the citizen, and with the other bestow it upon favoured individuals to aid private enterprises and build up private fortunes, is none the less robbery because it is done under the forms of the law and is called taxation.* This is not legislation. It is a decree under legislative forms." And in the same case the same court declared that "the whole theory of our governments—State and national—is opposed to the deposit of unlimited power anywhere."

No one would probably question that if an assemblage of men reasonably intelligent—though not versed in law, political economy, or the teachings of social science—were to come together for the purpose of founding a state *de novo*, they would, while recognising at once, and as it were instinctively, the necessity of insuring to the government of such state a revenue adequate to its support, never even



so much as dream for one moment of intrusting to it a power to take the property of any individual member of such assemblage, except so far as might be absolutely necessary to carry out and fulfil the purposes for which it was proposed to call the state into existence. They would be mentally blind if they did not see at once that in intrusting to that state a power of unlimited interference with the citizen's right to property, they would create not a free government but a despotism.

The question may be here naturally asked, Is there any record in history of any assemblage of the founders of a state which discussed this subject, or took definite action in respect to it? In answer it may be said that the two most striking assemblages in history which resulted in the formation of states, and of which any record is preserved, occurred in connection with the first settlements of New England, and that which resulted in the formation of the Federal Constitution and the creation of the nationality of the United States. The assertion would hardly be warranted that the early plantations of New England were formal assemblages gathered together for the avowed purpose of forming a state. They were, in fact, land companies, and so far as the law then existing permitted, were incorporated as such. This act of incorporation, derived from a corporation created by James I of England in 1606, and known as the Plymouth Company, was in the first instance and at once used as the basis for forming a political organization by the members of a land company or plantation. The necessity of a revenue to defray the expenses of the organization or incipient government, and in default of which there would be no adequate protection to persons and property, or, what is the same thing, no civilization, was at once recognised; and probably the very first act of the assemblage of the members of the company, after the selection of persons to exercise authority, was to authorize the levy of taxes. These taxes were assessed and collected in all respects as they are now in the great States that have been the outcome of these feeble plantations, through what may be termed a process of political evolution. That is, the individual members of the various communities or their authorized representatives met in their "General Court," as it was called, made appropriations, and, in

order to pay them, levied what they termed a "rate" or assessment. This levy was put into the hands of a constable, who proceeded to enforce or collect the tax, either in the form of work or commodities or money. There is furthermore no indication in the records of these early times of any limitation as to the extent or degree of assessment, and for the very obvious reason that it never then occurred to any one that the power of taxation could possibly be used for the destruction of private property or controlling the acquisition and distribution of property—the inventions of a later period. The taxation of those days was necessarily of the crudest possible character. It fell almost exclusively on real property, and what was manifestly tangible and visible, for the very good reason that there was very little of what is now called personal property in existence—that is, there were no credit or paper representatives of property, but everything in the nature of property existed in the form of land, slaves, houses, animals, agricultural products, tools, or furniture.\*

The record of the assemblage (convention) that drafted the Constitution, which by adoption by the parties (States) thereto called the United States into existence as a nation, on this subject of guarding and limiting the taxing power on the part of the prospective State or Government which they proposed to create, is comparatively full and complete. The Revolution, which involved the renouncing of all allegiance of the British-American colonies to the mother country, had its origin in unjust taxation; and in the Declaration of Independence this fact was made conspicuous among the reasons that were relied on by the colonies to justify their action in the opinion of mankind. The attempt in 1778 to establish a General Government by the union of all the colonies under certain conditions, known as Articles of Confederation, was found after a few years of experience to be wholly lacking in all the elements of strength and stability, through the lack of any proper adjustment of the power of taxation; thereby entailing an almost complete inefficiency of sovereignty. Thus, there was no power in the Congress of the Confederation to raise money by taxation; but the Confederation

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\* See note at the end of this chapter.

depended for revenue upon requisitions on the several States, with which the States might comply or not, as they chose, and with which they generally did choose not to comply, either promptly or fully, if at all. Some of the States levied duties on the imports of merchandise at the expense of their neighbours; and adjacent ports in different States competed with each other by arbitrarily varying the rates on imports, as the Congress of the Confederation had no authority to regulate commerce, or legislate on this subject for the whole country.\* The result was, as Mr. Madison expressed it, that "the Federal authority had ceased to be respected abroad, while at home it had lost all confidence and credit." It was to remedy this one radical infirmity, more than any other, that the present Constitution was projected and formed. Other great improvements in the Articles of Confederation were contemplated and made in the Constitution when it was formed, but the most important of all was in the regulation of taxation. Hamilton, who drafted the address to the States inviting them to send delegates to the convention by which it was formed, wrote, in *The Federalist*, "The power of taxation is the most important of the authorities proposed to be conferred on the Union."

The necessity of conferring adequate power in this particular upon the new Government which it was proposed to create was admitted by all; and yet there was no power which the people were more determined to guard, so that it could never be arbitrarily or unjustly exercised. And if it had not been supposed that the provisions of the new Constitution furnished ample security against any such action, not one of the States would have assented to its ratification.

The preamble of the Constitution asserts, almost in the first instance, that the object of its formation was to "estab-

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\* The author of *The Federalist* (No. VII) refers to the situation of New York, as compared with that of Connecticut and New Jersey, as affording an example of the opportunities which some States had under the Confederation of rendering others tributary by a monopoly of the taxes on imports, and said that New York would neither be willing nor able to forego the advantage of levying duties on importations, a large part of which must be necessarily paid by the individuals of the other two States in their capacity of consumers.

lish justice," an obvious correlative of which is that there must be equality, and no discrimination in taxation as respects the same persons or things. In its Article I (second section) it next provided that "representatives (in Congress) and direct taxes shall be apportioned among the several States according to their respective numbers, excluding Indians not taxed." The explanation of this provision, which now seems singular, is undoubtedly to be found in the assumption of the framers of the Constitution that taxation in the future, as it had been in the past, would be mainly *direct* in its assessment and incidence; and that wealth was so equitably distributed in the colonies (as it was at that time), and, as Roger Sherman, of Connecticut, expressed it, "the number of people alone" was "the best rate of measuring wealth." And on such supposition the absolute requirement of a strict apportionment of taxation according to population, with an inherent penalty of loss in congressional representation as the result of evasion, was undoubtedly regarded as a safeguard against unjust or discriminating taxation:

Next, in section 8, Article I, after empowering Congress "to lay and collect taxes, duties, imposts, and excises," to pay the debts and provide for the common defence and general welfare of the United States, was added another provision, the like of which does not find an exact counterpart in any political constitution or statute of which there is historical record—namely, that "all duties, imposts, and excises shall be uniform throughout the United States." This provision is one of the first importance. It would seem that there could be no doubt that the framers of the Constitution, having specially in view the fact that, under the Articles of Confederation, the several States endeavoured to tax everything belonging to every other State that came within their territorial jurisdiction, and that there was no authority on the part of the then General Government to prevent such action, did not mean that the entity, called a State, they were about to create, should have any power of discriminating in respect to the imposition of duties, imposts, and excises in any degree; fully recognising that the moment a State or government thus discriminates it passes the line of distinction between a free government and one that

is not free. It is to be further noted that the words "to pay the debts and provide for the common defence and general welfare of the United States" should also be regarded in the light of a limitation of the purpose for which the taxes, etc. (authorized in the opening words of the section), may be laid and collected. This view was taken and strongly presented by Mr. Jefferson in 1791, shortly after the adoption of the Constitution. He says: "To lay taxes to provide for the general welfare of the United States, that is to say, 'to lay taxes for *the purpose* of providing for the general welfare.' For the laying of taxes is the *power*, and the general welfare the *purpose*, for which the power is to be exercised. They are not to lay taxes *ad libitum* for any purpose they please; but only to *pay the debts or provide for the welfare of the Union*. In like manner they are not to do anything they please to provide for the general welfare, but are to *lay taxes for that purpose*. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the union, would render all the preceding and subsequent enumeration of power completely useless."\*

Finally, there was added by amendment to the Constitution the following provision, which, although implied in the *Magna Charta*, had not been previously so explicitly expressed in the Constitution or statutes of any other State: "*Nor shall private property be taken for public use without just compensation.*" Obviously this provision constitutes another limitation on the power of Congress in respect to the taking of private property for public use by taxation or any other method. In a case involving the hearings of this provision on the taxation of a citizen of New Jersey, the Supreme Court of that State analyzed and interpreted its meaning as follows: "A tax upon the person or property of A, B, and C individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons or property of the class of persons or kind of property subject to this taxation is, to the extent of such excess, the taking of pri-

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\* From Jefferson's opinion on the constitutionality of a national bank, written in February, 1791.

vate property for a public use without compensation. The process is one of confiscation and not of taxation.”—§6 *New Jersey*, p. 66, 1872.

It is certain, therefore, that in at least one assemblage for the purpose of creating a State—namely, the Federal Convention—its members clearly recognised the incompatibility of the possession and exercise of an unlimited power of taxation by a State and the coexistence of a free government.

**RIGHT OF EMINENT DOMAIN.**—Apart from the right of a State to take private property for its use by taxation, the State may also legitimately take such property when the interest of the public requires it, through what is called the *law or right of eminent domain*. The distinction between the power of taxation and the power of eminent domain is, however, clear and well defined. An appropriation of property under the right of eminent domain is a forced sale which its owner is compelled to make for the public good, and for which a pecuniary consideration equal to the estimated full value of what is taken is due from the State. And the exaction can not be considered as a tax “unless similar contributions are made by the public itself, or be exacted rather by the public will, from such constituent members of the same community as own the same kind of property.” On the other hand, no pecuniary consideration is paid when money is demanded under the power of taxation, the benefits which the taxpayer is assumed to receive being indirect.

**AN IMPORTANT IMPERFECTION OR OMISSION IN THE FEDERAL CONSTITUTION.**—Any discussion of the sphere of taxation in the United States would be incomplete that failed to recognise a feature, in the way of imperfection or serious omission, in the Federal Constitution, that hitherto has not attracted the attention it deserves. All powers inherent in the Constitution of the United States were derived from the States, and granted by them in their acts of ratification; and “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.”—*Article X, Constitutional Amendments*.

As has been already pointed out, the convention that framed the Constitution was especially solicitous and care-

ful to guard and limit the power of taxation on the part of the new Government which it was proposed to create, so that it could never be arbitrarily or unjustly exercised. They anticipated in action the aphorism of John Stuart Mill, that "men do not need political rights in order that they may govern, but in order that they may not be misgoverned"; for, as was truly said by Guizot, "a constitution is only a device for turning ordinary mortals into tolerable monarchs." At the same time, the convention practically omitted to impose any limit or restriction on the exercise of the power of appropriating private property on the part of the States; or, as Chancellor Kent expressed it in his Commentaries on the Constitution, they left "to a State the command of all its resources and the unimpaired power of taxing the people and property of the State." On this point the only direct provisions of the Constitution are that neither the Federal nor State governments shall take private property for public uses—i. e., by taxation or right of eminent domain—without due compensation; and that no State, without the consent of Congress, shall lay any imposts or duties on imports or exports. By repeated decisions of the United States Supreme Court, another provision has been substantially ingrafted in the Constitution—to wit, that neither the Federal Government nor the governments of the States shall tax any of the instrumentalities or exclusive property of the other. The result is that, except for possible provisions in the Constitutions of the several States, their respective legislative assemblies may regulate, restrict, or appropriate the property of its citizens to an unlimited extent, and may delegate this sovereign power to local municipal corporations created by them. In short, in virtue of the power of levying unlimited taxes, the power of the Legislatures of the States that make up the Federal Union is as absolute as that of the Czar of Russia or the Sultan of Turkey. Not only may they take in this form all the property in the commonwealth, but also the property of its citizens in other countries. There is no Federal constitutional hindrance to their taxing, to any amount, real estate in any other State or country owned by citizens resident within their territorial jurisdiction. The constitutional provision that private property must be paid for when taken for public



uses mainly refers, in the States, to the taking of land for highways and other similar acts of necessity by eminent domain.\*

How little the people of the United States recognise the fact that they are living under a dual form of government, with like powers to some extent, especially in respect to the exercise of taxation, finds an illustration in the following incident: The question was recently put to the writer by a gentleman who had filled with ability the office of Governor of one of the leading States of the Federal Union, how it happened that the Federal Government could impose on him an income tax, and his own State, at the same time, assess him with not only another like income tax, but also with a tax on the property from which his income was derived? The idea of a dual government and its inconveniences, and that the Congress of the Federal Government had not cared to remedy the latter, had not occurred to the interrogator.

Had the power of the States to take money by taxation from their people been limited at the time of the formation of the Federal Union by constitutional provisions, the in-

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\* "There is nothing in the Constitution of the State of New York which requires that taxation shall be general, so as to embrace all taxable persons in the State, or within any district of the State; or that it shall be equal, or that it shall be in proportion to the value of the property of the person taxed, or that it shall not be apportioned according to the benefit which each taxpayer is supposed to receive from the object on which the tax is expended."—*People ex rel. Griffin vs. Mayer*, 4 N. Y., 419, 1851.

"There is no constitutional limitation upon the legislative power to tax the persons and property of individuals within the State. The power may be exercised to pay debts contracted before the property-holder comes within the jurisdiction."—*Pampelly vs. Village of Oswego*, Ct. of App., 1863, N. Y.

"Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited when the subjects to which it applies are within her jurisdiction."—*Kirtland vs. Hotchkiss*, Connecticut.

"The Legislature can constitutionally impose a tax on all watches, pianos, carriages, dogs, spirituous liquors, or other chattels without reference to their value. It can impose an arbitrary tax upon any avocation or business without estimating its volume or value."—*People vs. Equitable Trust Co., of New London, Conn.*, 1887; *System of Taration in the State of New York*, prepared by Hon. Julien T. Davies, at request of a committee of the Legislature, 1888.



jury and disgrace of State repudiation might have been wholly avoided, and much wasteful extravagance checked.

“Within an hour’s ride from the city of New York several towns can be reached that were bankrupted by undertaking ‘public works upon a magnificent scale.’ The number of Western communities that have been ruined from the same cause is countless. A very great number of people in the Eastern States, both poor and of the middle class, have been impoverished by the sudden check to the prosperity of these communities. Nor is any severer tax imposed upon any class than that which is paid by those who have only their wages to live upon, when they are deprived of these by the collapse of municipal credit and the consequent sudden stop to extravagant expenditure. The average cost of the pensions paid by the United States is ten to twelve dollars a year to every family in the country, and in many cases the pension charge alone is equal to half a month’s or even to a month’s wages. Not a few of the governments of the earth are now insolvent because of excessive expenditures upon public works. In South America and Australia, extravagant undertakings of this kind have caused widespread ruin and distress; and the poor of several other nations are likely to find out eventually that the alleviation of temporary distress by governmental expenditure of capital is like keeping off the cold by burning down the house.” \*

That the State governments should have bestowed the unlimited and imperial power of taxation upon city governments, and given up to their use and control the entire property of the citizens, is an extraordinary abuse of trust and a renunciation of the true functions of government. As a result of this policy these delegated governments have, within a comparatively recent period, absorbed for alleged public uses a large proportion of the property of the citizens, to the estimated extent in some instances of more than one third—that is, the usufruct (right of using and enjoying)—and the American citizen has to-day no constitutional or legal remedy. “No such plunder was ever sanctioned or practised before in the history of civilized governments. That it has been possible in the United

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\* D. MacG. Means, in *The Forum*, 1894,

States argues the gravest defect in its political system. That a check is needed of the most absolute kind is recognised by all thoughtful men. Such check can only be had from the Legislatures of the States, who can not be too prompt in correcting the evils resulting from this extraordinary surrender of their supreme jurisdiction on the vital subject of taxation. The Legislature holds the public purse, and is false to its trust as its custodian when it authorizes corporations to put their hands, unwatched, into this purse and take from it, uncounted, all that their extravagance and cupidity desire. It is no apology that city governments are chosen by popular vote. It is the essence of our government that personal rights are, by our Constitution, wholly independent of the voting power, and certainly property should be equally so protected."

The question here naturally arises, How happened it that the framers of the Constitution and founders of our Government, while carefully defining and limiting the powers of the Federal Government in respect to the taking of property through taxation, omitted to make any like provisions applicable to the States? An answer is, that it was probably an oversight, favoured by the circumstance that there was no English precedent for such provisions. At the time of the Revolution it was, and ever since has been, the occupation and duty of the British House of Commons to limit and, if considered expedient, resist the pecuniary demands of the crown, and latterly of its ministers; and this occupation and duty were never delegated without restriction to any subordinate legislative assemblage. It might have been, and probably was, assumed by the framers of the Federal Constitution, that the several States in making their Constitutions would have followed the precedents respecting the rights and duties of taxation that they (the framers) had established; and, if the several Legislatures of the States had been confined to these rights and duties, and had never delegated them without restriction to the complicated, ill-organized, and irresponsible municipal corporations, which in latter days have grown to such portentous size, little of danger would have followed.\*

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\* In his treatment of this important topic, the author is mainly indebted to Mr. Manley Howe, of Boston, who, in a newspaper article published some years ago, seems to have been the first

It should, however, be here noted that remedial action in this matter has recently been taken by some of the States, by forbidding their counties, cities, towns, or villages from incurring an indebtedness in excess of a percentage, varying with their population, of the valuation of the real estate subject to taxation. Constitutional restrictions on the borrowing power of the State itself, and of the municipalities within its territorial jurisdiction, have also in some of the States been adopted.

From the above discussion the following conclusions would seem to be fully warranted:

The limitation on the exercise of the power of taxation under a free government necessarily grows out of the source and sole justification of the power—namely, *its necessity*; and the righteousness of any specific interference by the state with individual rights in respect to property (as well as in respect to personal liberty) may be tested by the question, *Is it necessary?* Not, *Is it convenient?* Not, *Is it suitable?* If the necessity exists, then the power may be justifiably exercised to a corresponding extent. But, on the other hand, if the interference transcends that which is absolutely essential for fulfilling the rightful purposes for which the state exists, then it loses its sole justification of necessity and becomes tyranny, the definition of which is “despotic use of power.” Further, “if the state, even to promote its necessary and legitimate objects, takes the amount of property to which it is entitled in such a manner as requires a citizen to pay more than his just share of the requisite amount—whether it be great or small—it takes that to which it has no right; it does what, if done by a citizen in defiance of law, is called robbery; if under colour of law, is called fraud; but which in a government which makes law is simply confiscation and tyranny.” And yet, very strangely, this tyranny has come to be regarded and defended by not a few intelligent persons who claim to understand the theory and nature of a free and just government as an act of wisdom and statesmanship, and in the highest degree beneficent to the citizen whose property is confiscated.

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person to intelligently present the facts in the case and their consequences to the general public.

It will be interesting to print the provisions for "Public Charges" contained in the "Book of the General Lawes and Libertyes concerning the Inhabitants of Massachusetts, 1660," one of the earliest compilations of the laws of an American colony:

"2. *The Court considering the necessity of an equal contribution to all common charges in Townes*, Doth Order, That every Inhabitant, shall contribute to all charges, both in Church and Commonwealth whereof he doth or may receive benefit: And every such Inhabitant, who shall not contribute, proportionably to his ability, to all common charges, both Civil and Ecclesiastical, shall be compelled thereunto, by Assessment and distress, to be levied by the Constable, or other Officer of the Town, and the lands and estates of all men (wherein they dwell) shall be Rated for all Town charges, both civil and Ecclesiastical (as aforesaid) where the lands and estates shall lye: and their persons where they dwel.

"3. *For a more Equal and ready way of raising means for defraying the publick charges, and for preventing such inconveniences, as have fallen out upon former assessments*, It is Ordered and enacted by the Authority of this Court. That the Treasurer for the time being, shall from yeare to yeare in the fift month, without expecting any other order, send his warrants to the Constable, and Selectmen of every Town within this Jurisdiction, requiring the Constable to call together the Inhabitants of the Towne, who being so assembled, shall chose some one of their freemen, to be a Commissioner for the Towne, who together with the Selectmen, for their prudential affairs, shall some time in the sixt month, then next ensuing, make a List of all the male persons in the same Towne, from sixteen yeares old and upwards, and a true estimation of all personal and real estates, being or reported to be the estate of all and every the persons in the same Town, or otherwise under their custody or managing according to just valuation, and to what persons the same doe belong, whether in their owne Town or elsewhere, so neer as they can by all lawfull means, which they may use, *viz.*, of houses, lands of all sorts as wel broken up as other (except such as doth or shall lye common for free feed of cattle, to the use of the inhabitants in general, whether belonging to Townes or par-

ticular persons, but not to be kept or hearded upon it, to the damage of the proprietours,) mils, ships and all small vessells, merchantable goods, cranes, wharfs, and all sorts of cattle; and all other known estate whatsoever, either at sea or on shore, all which persons and estates are by the said Commissioners and Selectmen to be assessed, and rated as here followeth; *viz.* every person aforesayd (except Magistrates and Elders of Churches) one shilling and eight pēce by the head, and all estates, both real and personal, at one penny for every twenty shillings, according to the rates of cattle, hereafter mentioned. The estates of all marchants, shopkeepers and factors, shall be assessed by the Rule of common estimation, according to the will and doom of the assessours, having regard to their stock and estate, be it preferred to view or not, in whose hands soever it be, and if any such merchants find themselves over valued, if they can make it appear to the Assessours, they are to be eased by them, if not by the next County Court; And houses and land of all sorts (except as aforesayd) shall be rated at an equal and indifferent value, according to their worth in the Towns and places, where they ly. Also every Bull and Cow of four years old and upward at three pounds, Heifers and steers between three and four years old at fifty shillings, and between two and three years old at forty shilling, and between one and two, at twenty shillings, and every ox of four years old and upward at five pound, every horse and mare of three years old and upwards *ten pounds*, between two and three at *seven pounds*, of one year old and upwards, at *five pounds*, every ewe sheep above one year old, at *five and twenty shillings*, every goat above a year old, at *eight shillings*, every weather sheep above one year old, at *ten shillings*, every swine above one year old, at *twenty shillings*, Every Asse above one year old, at *forty shillings*. And all cattle of all sorts, under a year old, are hereby exempted, as also all hay and corn in the husbandmans hand because all meadow, arable ground, and cattle are rateable as aforesaid. And for all such persons as by the advantage of their arts and trades, are more enabled to help bear the publick charge, then common labourers and workmen, as *Butchers, Bakers, Brewers, victuallers, Smiths, Carpenters, Taylers, Shoemakers, joyners, Barbers, Millers and Masons*, with all other manual Persons and

Artists, such are to be rated for returnes and gaines, proportionable unto other men, for the produce of their estates. Provided that in the rate by the poll, such persons as are disabled by sickness, lameness or other infirmitie, shall be exempted. And for such servants and children as take not wages, their parents and masters shall pay for them, but such as take wages shall pay for themselves. And it is farther Ordered, that the Commissioners for the several Towns in every shire, shall yearly upon the first fourth of the week, in the seventh month, assemble in at their shire Town: and bring with them fairely written the just number of males, listed as aforesaid, and the assessments of estates made in their several Towns, according to the rules and directions in this present Order expressed, and the said Commissioners being so assembled, shall duely and carefully examine all the said lists and assessments of the several Towns in that shire, and shall correct and perfect the same, according to the true intent of this Order, as they or the major part of them shall determine, and the same so perfected, they shall speedily transmit to the Treasurer under their hands, or the hands of the major part of them; and thereupon the Treasurer shall give warrants to the Constables to collect and leavy the same; so as the whole assessment, both for persons and estates, may be payd in, unto the Treasurer, before the twentieth day of the ninth month yearly; and every one shall pay their rate to the Constable, in the same Town where it shall be assessed, (nor shall any land or estate be rated in any other Town; but where the same shall lye, or was imployed to the owners, reputed owners, or other proprietors use or behoof, if it be within this jurisdiction) and if the Treasurer cannot dispose of it there, the Constable shall send it to such place in Boston, or elsewhere, as the Treasurer shall appoint at the charge of the Country, to be allowed the Constable, upon his account with the Treasurer, and for all peculiars, *viz.:* Such places as are not yet layd within the bounds of any Town, the same lands, with the persons and estates thereupon, shall be assessed by the rates of the Town next unto it, the measure or estimation shall be by the distance of the meeting houses."

It was also ordered that no estate of land in England should be rated in any public assessment.

## CHAPTER XI.

### LIMITATION ON THE INSTRUMENTALITIES OF TAXATION.

ATTENTION is next asked to the instrumentality by which taxation subserves the necessities of the state and enables it to effect the purposes for which it was instituted. The designation of this instrumentality is "revenue," as is indicated in the phrase "tariff (or taxation) for revenue." But the term "revenue" is abstract and most indefinite, and as popularly used conveys little meaning other than a receipt of something of value. In rude or incipient forms of government, where tribute or taxes were payable in cattle, skins, cocoanuts, salt, grain, and the like, the term might be fairly interpreted as an income of property in general. But in a *highly civilized* state such a meaning is inadmissible. The government of such a state obviously could not defray its varied expenses by payments with various articles of property, even though their value may be unquestioned—as, for example, its executive with fish, fresh or salt; its legislators with distilled or fermented liquors; its judges with boots and shoes; its soldiers and sailors with cotton or corn; and its clerks with agricultural implements—even though the producers of all these forms of wealth or property may be most willing to give them in discharge of their tax obligations.\* In such a state revenue has and can have, therefore, but one meaning—

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\* In ancient times cattle were regarded among nations of a considerable degree of civilization as standards of value, and obligations to government in the nature of taxes were payable therein. As recent, moreover, as 1758 taxes in Virginia and Maryland were payable in tobacco; and in Massachusetts, Indian corn, musket balls, dried peas, cattle, and beaver skins were made legal tender for the payment of taxes until the early years of the eighteenth century. Ultimately, and in all cases as civilization advanced, such media for the payment of taxes, or the discharge of other forms of indebtedness, have been found to result in terrible currency confusion and to be wholly impracticable.



namely, *money*; because money is the indispensable and practically the only means of defraying the expenses of the state and efficiently administering its government; and taxation is the process by which the state obtains money from its citizens, who in turn obtain it (as before pointed out—see Chapter IX) in exchange for some product of their labour or for some direct personal service. In short, money is an expedient that finds its sole justification in its adaptation to a special purpose.

At the same time it is important to bear in mind that the raising or procurement of money with the view or purpose of accumulating wealth is not a legitimate function or object of civil government.

This point, which, stated and regarded as an abstract proposition, may seem to the reader as a matter of interest but of little practical importance, finds a very interesting and most instructive exemplification in the recent attempt to govern South Africa by means of a chartered company—"The South African Company." The attempt failed by the confusing on the part of the company of two things which are absolutely irreconcilable and ought never to be associated—namely, the prerogative of governing men on the one hand and the desire of making money on the other. This the company in question attempted to do by taxing the inhabitants of the territory embraced in its charter for the purpose of making dividends for shareholders, who as a rule did not live in the country, but mainly in England. The result has been a thoroughly vicious and intolerable form of government, one which "has operated to deaden the sense of responsibility among the rulers, who are here to-day but are gone to-morrow, and answerable to nobody but the company."

Now, if these premises are correct—and it is difficult to see how they can be disproved—it would seem to follow that to seek to make taxation, which is a fit contrivance only for raising revenue, an instrument for effecting some ulterior purpose, be it never so just and legitimate, to seek to use it for the attainment of any other advantage than the obvious one of raising money, is to lose sight of a fundamental principle of every free government and to forbid all expectation of recognising any other basis for the exercise of this great sovereign power of the state than



expediency, which in turn will depend upon the actions, passions, and prejudices of legislators, who may not be the same in any two successive legislative assemblies.

Such a perversion of principle, furthermore, reaches its climax of absurdity in practice when its immediate beneficiaries claim to be the only proper persons by whom the incidence and amount of taxation can be intelligently determined—a claim that is practically equivalent to the assumption that privilege should take precedence of rights in the theory of government.\* And yet there have been but very few of the revenue enactments in recent years of the Federal Government of the United States that have not only indorsed the rightfulness and desirability of such claims, but have made them the basis of most important legislation.

As this subject has hitherto received but little attention from legislators and the legal profession in the United States, the following citations from recognised American authorities are most pertinent in this connection:

“A burden laid not for the purpose of producing revenue, but in order to accomplish some ulterior object which the General Government lacks the power otherwise to accomplish, comes under no definition of the word “tax” which is recognised in public law. It demands no contributions for the service of the state; it adds and is expected to add nothing to the public revenue. It annihilates that upon which it is levied, and it differs from confiscation only in this: that confiscation seizes something of value and appropriates it to the needs of the Government, thus making it useful, while this seizes it for the purpose of destruction.”—*Cooley, Law of Taxation, p. 75.*

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\* In popular discussions of tariff revisions in the United States such a claim has actually been advanced by the representatives of interests in whose behalf certain imposts had been specially enacted, and which were not for purposes of collecting but rather for the prevention of revenue.

“It is not claimed that this statute [McKinley Tariff Act], any more than any other human ordinance, was perfect in its details, nor that all its rates of assessment of duties should have been maintained, but the modifications suggested by time and experience should have been left to the friends of the measure.”—*Letter of the Hon. L. P. Morton, accepting nomination for the office of Governor of New York, October 9, 1894.*

“One grievous invasion of property—and of course ultimately of labour, from whose accumulations all property grows—is by Government itself, in the shape of taxation for objects not necessary for the common defence and general welfare. Men have a right not only to be well governed, but to be cheaply governed—as cheaply as is consistent with the due maintenance of that security for which society was formed and government instituted. This, the sole legitimate end and object of law, is never to be lost sight of—security to men in the free enjoyment and development of their capacities for happiness—security: nothing less, but nothing more.” — *Sharswood, Legal Ethics*.

“To the extent that the mass of our citizens are inordinately burdened beyond any useful public purpose and for the benefit of a favoured few, the Government, under pretext of an exercise of its taxing power, enters gratuitously into partnership with these favourites, to their advantage and to the misery of a vast majority of our people.” — *Message of Grover Cleveland, President of the United States, December, 1888*.

**TAXATION FOR REVENUE ONLY. WHAT DOES IT MEAN?**  
—It is essential to the completeness of this discussion to call attention at this point to the circumstance that a full recognition and rigid adherence in practice by a Government to the principles of taxation above shown to be fundamental, will not interfere with or impair the efficiency of its administration. The raising of revenue (money) by taxation is one thing; the determination of how the revenue collected shall be used or expended is quite another thing; and the danger line to the liberties of the people is crossed when these two functions are confounded. The exercise of the first, as already pointed out, is subject to limitations growing out of the conditions essential to the existence of a free Government. The determination of the second rests primarily in the legislative department of such Government, and is subject to no legal limitations in the United States other than what flows from the oft-repeated *dicta* and decisions of its highest judicial authorities, that money taken out of the pockets of the people by taxation can not be used (expended) for any other than a public purpose; but what constitutes a public purpose

is so indefinite that one eminent jurist, especially versed in the subject, has declared that "there is no such thing as drawing a clear line of distinction between purposes of a public and those of a private nature." \*

If a state, therefore, in the plenitude of the wisdom of its legislators, desires to interfere with the operation of the laws of trade, domestic or foreign, control the preferences of its citizens in respect to production or consumption, repress one form of industry and stimulate another, and discourage even to prohibition the indulgence of such tastes and passions as it may judge to be detrimental to itself or the individual, it may legitimately exercise functions entirely different from that exercised in raising revenue and governed by entirely different principles. The right to regulate trade and commerce and the power of police are entirely independent of the right to raise revenue.

If the state, in providing itself with what it regards as necessary revenue, levies its taxes in such a manner that no citizen is required to pay more or allowed to pay less than his just proportion, then there is no tyranny in taxation, even if the methods employed, without any such intent, may incidentally promote private interests and sumptuary purposes. But if, on the other hand, a just and equitable method of taxation will not promote these purposes, and, as is usually the case, the state resorts to methods that are not just, not equitable, and imposes upon some citizens an undue share of the general public burden, then to that extent taxation becomes tyrannical, and can not be justified except upon the assumption that there is no limitation on the right of a state to interfere with individual rights to property; which is the same thing as asserting that the state in question is not "free," but is a "despotism." In short, the proposition would seem to be clear that the state can not, without violating that simple principle of justice which prescribes equality in taxation, use its taxing power for effecting any other purpose whatever except to raise money.†

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\* Cooley, *Law of Taxation*, p. 70.

† A legal writer of eminence (Justice Cooley) has recently contended that this is not a correct view, for the reason that it is one which finds no "countenance in the practice of our Govern-

The principle here involved may be further illustrated by reference to a curious chapter of railroad experience. Some years ago the managers of one of the great railroads of the United States appropriated a part of its receipts from the carriage of freight and passengers to the support of an opera house and a corps of ballet dancers. Extraordinary as was this procedure, there was no question that the directors, who were trustees for the stockholders, had the right to determine how the earnings of the road should be applied, so long as the stockholders failed to restrain them or prevent their continuance in office; and as they did not, no legal action or restraint of their singular use of the receipts of the property was attempted. But if these same directors had decided not to take money directly from the aggregate earnings of the railroad for the furtherance of their peculiar views, but that in addition to certain rates for transportation all passengers and freight should pay a special sum (tax) for the support of the opera house, the state would have undoubtedly and properly intervened and forbidden its collection, on the ground that the railroad was not chartered (called into existence) for any such purpose, and that the attempt to use any power other than what was granted or contemplated in its charter was illegal and unwarranted.

Again, if the legislative department of the state decides that it would be expedient to establish or stimulate the manufacture of certain commodities, no one under a free government would venture openly to justify such action, except on the ground that public welfare would be thereby promoted, although practically such justification in the United States has long since ceased to be other than a pretence and a cover for the promotion of private interests. Suppose, for example, that the manufacture of the commodity which it is proposed to stimulate is tin plate, and it is decided that the desired result can be best attained by giving the domestic manufacturer the difference between what his product will sell for in a free market and what

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ment, or indeed that of any other." But if this contention is valid, then it may be pleaded with equal effect for the justification and continuance of every practice which old-time views and long usage have tolerated, but which a higher civilization or a broader culture demands shall be abrogated.

he can make it for—say fifteen million dollars per annum—it would seem to be only simple justice that the state should fairly and honestly pay the sum representing this difference, and raise the money,\* not by a tax on the consumers of the product artificially maintained, who are no more interested in the matter than all other citizens, but by a levy upon the community at large, in the same equitable manner as it raises money to defray its other expenses. In short, if any industry can not live without state aid, and it is for the public welfare that it should live, let the state directly subsidize it, and not maintain it by allowing private interest arbitrarily to exercise the great sovereign power of taxation.†

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\* A written public statement made by a Senator of the United States (George F. Hoar) in 1892, that an assertion by the National Democratic party of the United States in its presidential platform of that year, that "the Federal Government has no constitutional power to enforce and collect tariff duties except for the purpose of revenue only," was equivalent to an unveiling of an opinion that "the American people alone, of all civilized nations, have no power to do anything for the encouragement of their own industries," displayed an amount of ignorance and misconception of the powers and objects of the Government he served which, to say the least, was discreditable to its author.

† "Granting that it is expedient for the Government to spend money in the maintenance or the promotion of the iron manufacture, for example, it must be expedient also that the public should know the exact amount which it costs annually, just as it is expedient that the public should know exactly how much the army and navy costs, or how much the annual improvement of rivers and harbours costs. No view, however broad, of the province of government can furnish an excuse for concealing the expense of any great national undertaking. . . . But there is no trace of this expenditure in the national accounts. . . . Next, it must be said that any fund of large amount, raised and distributed in this way, must of necessity prove a corruption fund. By this I do not mean a fund distributed in bribes to individuals or organizations, but a fund the existence of which must be constantly present to the mind of the lazy, the improvident, or incompetent, as something to fall back on if the worst come to the worst. Suppose the national appropriations for the purpose of protecting manufacturing industry were made in the ordinary way by a distinct vote of Congress; were made, for instance, as the appropriations for the promotion of the carrying trade—the steamship subsidies, as they are called—are made in the shape of an annual maximum sum. Suppose this sum were paid over to the corporations or individuals engaged in each manufacture on their giving proof that they were carrying on a *bona-fide* business. Suppose

This was the idea of Alexander Hamilton, who in the early days of the republic favoured state interference with the pursuits of the people to a large extent, as the best method by which domestic manufacturing should be stimulated by the state. This idea, however, found no more favour with the parties specially interested at that time than it would at present; inasmuch as a brief practical experience would so soon demonstrate the smallness of the revenue necessary to be raised by honest taxation for the direct maintenance of an industry by the state, in comparison with the amount raised, for the most part by inequitable and unjust taxation, for the support of that form of interference by the state with production which goes under the name of "protection," as to make any long toleration of the latter policy by a free people exceedingly unlikely.

**GENERIC DIFFERENCE BETWEEN THE "TAXING" AND "POLICE" POWERS OF THE STATE.**—Attention is next asked to the generic difference between the "taxing" and "police" powers of the state (to which a brief reference has been made already), and to the incongruities and governmental abuses that inevitably result from a lack of full recognition of this fact. The object of the taxing power is to raise money to defray the expenditures of the state, and proof and argument seem conclusive that it can not be legitimately used for anything else. By the power of police is understood the internal regulation of the affairs of the state in the interest of good order. The idea, therefore, of resorting to taxation for the purpose of protecting individuals against their own foolishness, enforcing morality, preventing social evils, or as an instrumentality for the punishment of crime, is to pervert an agency from the one sole purpose for which it can rightfully exist to another less fit and not warranted by necessity, and presupposes an entire misconception of the principles of a

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that to each were given as much as would meet the loss, as shown by his books, incurred by him in competing with foreigners in the home markets. . . . The political objections to the protective system can not be made so clear as by inquiring how the plan of distributing the money directly by the public Treasury would work." —*E. L. Godkin, Problems of Modern Democracy, in Some Political Aspects of the Tariff, p. 98.*

free government; and all perversions of this power are certain to entail evils greater than the abuses which it is devised to remedy. If the prosecution of any trade or occupation, or the manufacture and use of any product, constitutes an evil of sufficient magnitude to call for adverse legislation, let the state proceed against it directly, courageously, and with determination. To impose taxes upon an evil in any degree short of its prohibition is in effect to recognise and license this evil. To demand a portion of the gains of a person practising fraud, may be an effectual method for putting an end to his knavery by making his practices unprofitable; but it would be, all the same, a very poor way for a state to adopt as a means for suppressing fraud. If absolute prohibition is the object, then such result should be attained through the police force of the state, and through its legislative enactments making the act, powers, or products which it is desired to suppress, misdemeanours or felonies. The manufacture and sale of spirituous liquors, in common with all other branches of business, is a legitimate subject for taxation, but there is a broad distinction—indeed, nothing in common—between taxing this business for revenue and in levying taxes with a view of preventing the business from being transacted at all, and so preventing revenue.

Again, if the above analysis of the origin, justification, and limitations of the power of taxation is correct, it would seem evident that to seek to make the occasion for the exercise of the power other than necessity, and the object anything else than the raising of money for meeting the expenditures of a government economically administered, is to strike a blow at not only good government, but also at free government. It is also a flat denial of the authoritative statement of the United States Supreme Court that "there are rights in every free government beyond the control of the state," and that the theory of our Government, State and national, admits of no place for the deposit of unlimited power. For the deliberate recognition and indorsement of the right on the part of the state to disregard these limitations in a single instance, is equivalent to a denial that there are any such, and certainly in this one department makes the Government despotic rather than free. Once recognise the principle of in-



equitable taxation, and no one can foresee how far it may be carried.

If it is contended, as it is, that the use of the power of taxation for purposes other than the collection of revenue finds justification in the fact that "the law-maker must look far enough beyond the general purpose to satisfy himself how any proposed levy is likely to affect the general good," a sufficient answer to such contention would seem to be that the general good is always best subserved by doing what is exactly right, and not what is expedient.

There is no question that the Federal Government of the United States, under its peculiar organization, is excluded from all responsibility for the internal order or morality of the States that make up the Union, and under such circumstances it follows that where Congress assumes that the consumption or use of certain commodities is prejudicial to the interests of the people (as it has done, as will hereafter be shown), and attempts, when providing means for the support of the Federal administration, to embody such assumptions, with a view of prohibitions or restraints, in measures of revenue, it is also enacting sumptuary laws \* and imposing taxes, not in accordance with any rule of equity, but by reason of some arbitrary and sentimental notions of how a citizen ought to live, dress, eat, and drink. In the case of the several States of the Union, whose power of taxation is practically unlimited, such action is in the nature of oppression; but in the case of the Federal Government, whose powers of taxation are carefully limited by its Constitution, it is clearly an act of usurpation. In further elucidation of this matter, it is interesting to note, that probably no example can be found in history in which an attempt has been made to continue the raising of revenue with the regulation of popular consumption, that has not resulted in failure as respects the attainment of both objects.

One of the most notable perversions of the correct prin-

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\* "Sumptuary: Relating to expense. Laws or regulations which restrain or limit the expenses of citizens in apparel, food, furniture, etc. Sumptuary laws are abridgments of liberty and of very difficult execution. They can be justified only on the ground of extreme necessity."—*Webster's Dictionary*.



ciples of taxation for the purpose of affecting the popular consumption of a commodity, has been the comparatively recent attempt of the Federal Congress (act of August, 1886) to prevent the use of one of the great discoveries of the age—namely, the manufacture of artificial butter, which, when properly prepared, is a most valuable and perfectly healthy addition to the food resources of the people. The practical results of this attempt are exceedingly curious and ought to be in the highest degree instructive. The burden of the tax—two cents per pound, and special taxes on manufacturers, wholesale and retail dealers—which was intended to be prohibitory, has not been sufficient to accomplish the object of its levy; for the annual production, sale, and consumption of oleomargarine in the United States have continually increased (from 34,325,000 pounds in 1888 to 48,364,000 in 1892, and 69,632,000 in 1894). The Federal courts having decided that it is merchantable, the States may to a certain extent also regulate its sale, but can not prevent its importation. The Federal Government furthermore derives a considerable revenue from its domestic manufacture and sale (\$1,409,211 in 1895), and an annual large and increasing quantity for the consumption and use of foreign countries is exported (127,193,000 pounds in 1894); and clearly, if such production and sale are fraudulent and wrong, the Government has become a partner in such fraud and wrong and in effect licenses them.

It is also an interesting fact that this idea of resorting to taxation for the primary purpose of enforcing morality and preventing social wrong is a comparatively modern idea, and finds its chief exemplification in the United States.

The lesson of all history is to the effect that, save in the case of war or invasion, nations have rarely or never lost a freedom once possessed, except through the tolerance (born of indifference) of a succession of gradual and insidious perversions and weakening of those fundamental principles which must be maintained unimpaired to make popular liberty possible. And it is alike startling and discouraging to note how rapidly, in recent years, the United States, as a political entity, has been travelling in this direction.

**THEORY OF THE POWER OF TAXATION ORIGINALLY ENTERTAINED BY THE AMERICAN PEOPLE.**—The idea of using the power of taxation for other purposes than that of obtaining revenue for defraying the necessary expenditure of the Government, was one hostile at the outset to all the beliefs and habits of thought of the American people; was totally incongruous with the social and political system which they instituted and expected, and was reluctantly admitted under the idea that the industries of a new country might need some temporary stimulus and assistance at the outset.\* The party (old Whig) that in subsequent years specially advocated the policy of protection to domestic industries, always also admitted that the Federal Government had no original right to exercise the power of taxation except for revenue, but it claimed that taxes on imports might and should be so adjusted as to afford protection for our infant industries. And in this they were joined by some members of the other great national party—the Democratic—who argued in favour of what was called “incidental” protection, or the protection which inevitably results in a greater or less degree from the imposition of duties without any such premeditated purpose.

**THEORY AND PRACTICE OF LATER DAYS.**—But it was not until after the termination of the war in 1865 that anybody in the United States ventured to openly maintain or defend the proposition that protection was other than the incidental and not the main object of the exercise of the taxing power, although this perversion of principle was tacitly recognised by the imposition and continuance of taxes which had for their intent, or resulted in, a prevention of the raising of revenue.

**ILLUSTRATIVE EXAMPLES OF THE PRACTICAL PERVERSION OF THE THEORY AND PRINCIPLES OF TAXATION.**—One of the most instructive examples of this kind was afforded by the imposition of a tax in 1869 of five cents a pound on the importation of crude or unmanufactured copper; which proved so prohibitive that in one year (1878) revenue to the extent of only five cents, accruing

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\* The doctrine of Hamilton was that while the payment of bounties for the encouragement of new industrial undertakings was justifiable, their “continuance on manufactures long established was most questionable.”—*Report on Manufactures, 1791.*

from the importation of only one pound of copper, was collected. The legislators who enacted the law productive of such a result might have pleaded in justification that revenue was their intent;\* but when a brief experience had proved that the taxing power had been used to prevent the raising of revenue by the state, and for a different purpose, it was evident that a continuance of the policy (and the tax was long retained) was in effect a justification and an indorsement of it. To complete the illustration, it should be further pointed out that the result of this perversion of the taxing power was to enable the owners of copper mines in the United States, especially certain ones of unprecedented richness—formerly the property of the United States, but sold for a mere song—to extort for a period of years from the people of the whole country the sum of five cents for every pound of copper they consumed, but from which exaction (aggregating millions) the people of other countries, who consumed the large surplus product of American copper exported, were exempt, as the tax laws of all countries have no extra-territorial jurisdiction. During the discussion and defence of this tariff enacted in 1890, however, all pretence and evasion were discarded, and the position openly taken that the Government could rightfully levy taxes, not for the purpose of raising revenue, and not to subserve any necessity of the state, and under the name of protection delegate to private or corporate interests the right to collect and appropriate them.

It has been contended by authorities worthy of all respect (the late George Ticknor Curtis, for example) that there is no perversion of the taxing power in the levy of duties on imports by the Federal Government for purposes other than revenue, for the reason that “duties are not taxes, but assessments, in the nature of tribute imposed on merchandise imported from other countries,” and that “when the Government levies duties on foreign products,” under the provision of the Constitution that “Congress shall have power to lay and collect taxes, duties, im-

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\* The United States Supreme Court has held that the judicial power can not inquire into the intentions of Congress in imposing a tax; and that, if injustice is done, the only remedy is an appeal to the legislative power that has inflicted it.

posts, and excises," "it does not exercise or pretend to exercise its taxing power." \*

In answer to this it is to be said, first, that the application of different names to one and the same act does not alter the nature of the act. Second, that usage and authorities among all nations and at all times are in unison in regarding such terms as imposts, duties, excises, customs, tolls, gabelle, talliage, tribute, and the like, when used in respect to the fiscal functions of a government, as expressive simply of different methods of effecting one and the same object—namely, the compelling of contributions from persons, property, or business for the use or support of the state. The contention, then, thus far is simply a quibble as to the meaning of words. Third, the authority given to Congress by the Constitution "to lay and collect 'imposts,' in connection with taxes, duties, and excises," does not warrant the assumption that any of these acts of levying and collection are to be by methods that are not primarily for the purpose of raising revenue (money) for the service of the state, or are antagonistic to the structure of a free government. Following the precedents before noted, a measure known as the Anti-option Bill was introduced and found favour in Congress, which was nothing more nor less than an attempt to make people dealing in certain staple agricultural commodities honest by the exercise of the taxing power; a measure devised for effecting indirectly that which it would be unconstitutional to do directly—namely, to prevent trading in cotton, grain,

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\* Mr. Curtis does not repeat this statement in his Constitutional History of the United States. In the second volume he had contemplated a note on a "tariff for revenue only," but his intention was laid aside, and the following appears:

"This question being in the domain of party politics rather than in that of constitutional history, the note suggested at p. 190 is omitted. Whether protection to manufacturers should be the *direct* object of a tariff, or whether it should be *incident* thereto, appear to be matters of mere verbal dispute. Every tariff is for revenue; and every tariff is intended to be so laid as to protect rather than to injure. If a tariff were laid for protection, *only*, it would find no constitutional warrant. Whether or not a given tariff discriminates unfairly in favour of one class at the expense of the others is a question for the law-making power to decide; and self-interest and party spirit will largely determine the conduct of legislators upon that question" (p. 691).

hops, meats, etc., for future delivery, by first assuming that all such sales are "immoral, unnatural, unjust, and injurious," and then attempting to put an end to them, not by the exercise of the police power of the several States, but by licensing and taxing them by the Federal Government under pretence of collecting revenue, when by the very terms of the bill no taxes productive of revenue are likely to accrue from its provisions. It is difficult to see why, if this extraordinary measure had become law and obligatory on all citizens, the policy of restraint involved should not have been made also applicable to the buying and selling of all articles other than cotton and cereals—as cloth, stoves, boots and shoes, securities—and even personal service; and why, if it is right to extinguish one trade or calling *by taxing it*, every other may not be uprooted and extinguished in the same way.\*

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\* As pertinent and most instructive on this subject, attention is asked to the following extract from a speech of Hon. Edward D. White (then a Senator of the United States from Louisiana, and now a judge of the United States Supreme Court), in the course of a debate in the Senate in July, 1892, on the so-called Anti-option Bill: "No power as to imposts was reserved in the States by the Federal Constitution. All the lawful powers of government which could be exercised in that particular passed into the life and being of the Federal Government by the lodgment in that Government of the power to levy imposts. In my judgment, if complaint is made of import taxes by the Federal Government, levied not for the purpose of revenue, but for protection or prohibition, the complaint is not that the Federal Government violates the Constitution or the limitations of the Constitution, because as to that all authority is granted by the Constitution. When I say this I mean no limitation by the Constitution by express provision of the Constitution. The complaint of undue or prohibitory external imposts is not that the Constitution has been violated.

"No, but that there has been a violation of the great fundamental and elementary principle of all government, which underlies all constitutions, which affect this Government and every other government, and which would affect the most unlimited government in the world. These principles are, that government is created with limitations flowing from the nature of its being, which teach that no government shall use its power for the benefit of the few to the detriment of the many. Therefore, all the arguments which have been made on the subject of the abuse of the impost power in the Federal Government are arguments addressing themselves not to the limit of delegation under the Constitution as to imposts, but to the want of power arising from the

Another proposition which has received the indorsement of high judicial authority in the United States \* is to employ Federal taxation for the crushing out of State lotteries, with the absurd accompaniment of no revenue (taxes); for if the desired object is attained, the payment of taxes and the procurement of revenue will be prevented. It seems clear, also, that if such a measure was once adopted it would constitute a precedent and authority for the destruction by the Federal Government, through the exercise of the taxing power, of nearly every faculty or power now belonging to and exercised by the several States; and that houses of prostitution, gambling and liquor saloons,

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very nature of government itself. The usurpation of power by Congress, not vested by the Constitution in Congress, is unconstitutional."

In the course of the debate to which reference has been made, Mr. White, in response to a question as to what he would as a Senator consider his duty in respect to a bill proposed to Congress for enactment which, while undoubtedly productive of revenue, was intended for some other purpose, made answer as follows: "I would have two questions to ask myself: Is this a bill raising revenue? That is the first question. If I determine that question in the affirmative, the lamp of my duty might lead my mind toward supporting that bill, but it could not carry me to that point unless another question were also answered: Is it an honest exercise of the taxing power, or is it a dishonest scheme to raise revenue and accomplish another purpose? If my mind, in the exercise of my duty here, found that either of these things existed, then, although it was a bill raising revenue, I would not vote for a dishonest bill raising revenue."

The point here at issue was also clearly recognised by President Cleveland, in his message in 1886, announcing his signature to a bill (above noticed) for taxing oleomargarine, where the real intent of taxation was popularly assumed to be prohibitive of production and sale and not revenue. "It has been urged," he said, "as an objection to this measure that while purporting to be legislation for revenue, its real purpose is to destroy, by the use of the taxing power, one industry of our people for the protection and benefit of another. If entitled to indulge in such a suspicion as a basis of official action in this case, and if entirely satisfied that the consequences indicated would ensue, I should doubtless feel constrained to interpose executive dissent." In other words, the President took the bill as it came to him as ostensibly a revenue measure, and in the exercise of his executive prerogative passed upon it as such, but at the same time he was careful to say in this message that if that bill had not presented that aspect to him, he would have been constrained to exercise the executive veto.

\* Judge Cooley, *Atlantic Monthly*, April, 1892.

opium "joints," and other haunts of vice now under the control and supervision of the police powers of the States, might be regulated or suppressed by Federal taxation, as well as lotteries.\*

It should also be remembered that lotteries, if they exist at all in the United States, must do so under the authority of State laws; that Congress can not take from a lottery company the charter which a State Legislature has granted; or make the issue of its tickets illegal, or punish as a crime the action of the managers by whom the business of a lottery is carried on; and further, that any legislation to make lotteries illegal should inferentially pertain to the State: first, because no jurisdiction has been given under the Constitution to Congress, except by remote inference, to interfere with this matter; and, second, because there is no doubt that there was a complete unanimity of opinion among its framers that lotteries were legitimate and unobjectionable instrumentalities of society, inasmuch as at the time the Constitution was framed they were authorized by the States and extensively employed throughout the country for the founding of schools and colleges, and the erection of churches, hospitals, and the construction of roads, bridges, and ferries. On the other hand, it does not admit of contention that under the exclusive power vested by the Constitution in the Federal Government to "establish post offices and post roads," the use of the mails for the transmission of lottery tickets and correspondence may be legitimately inhibited, or that the general business of lotteries may not be rightfully made subject to Federal taxation for the sole purpose of revenue. When the Provincial Legislature of Canada recently decided to suppress lotteries in the Dominion, the measures which it instituted for so doing were not made contingent in any way upon the power of taxation, but by the imposition of heavy fines and penalties, not only on those engaged in the business, but also upon those having lottery tickets in their possession.

During the early years of the late war, taxes were im-

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\* "Congress is not empowered to tax for those purposes which are in the exclusive province of the States."—*United States Supreme Court, Gibbons vs. Ogden*, 9 Wheaton, 1, 199.



posed on the circulation of the State banks, "manifestly with a view to raise revenue and inform the authorities of the amount of paper money in circulation, and for no other purpose." But in 1865 these taxes were greatly increased, not for revenue, but with the admitted intent of destroying all banking institutions chartered by the States, leaving only similar institutions chartered by the Federal Government in existence. The result sought was fully attained, and the constitutionality of the legislation by which it was achieved was subsequently affirmed by the United States Supreme Court, which in the case of *Veazie vs. Fenno* (8 Wall., p. 552) nevertheless held that "the States possessed the power to grant charters to State banks," that "the power was incident to sovereignty, and that there was no limitation in the Federal Constitution" of such power. But in delivering the opinion of the court, the Chief Justice (Chase) declined to enter upon an inquiry whether the tax imposed on the State banks was so excessive as to divulge the legislative intention to prohibit banking on their part, but he argued elaborately that for another and stronger reason the tax could be constitutionally imposed because it was a tax levied for a lawful purpose, which lawful purpose was to restrain a State from interfering with the Federal control of the currency and the right of the national Government to emit bills of credit, and it was upon that point that the decision of the Supreme Court was in fact rendered.

The point of interest in this decision, however, is not the right of the Federal Government to regulate, especially under the original admitted necessity for the exercise of war powers, the currency of the country, but whether, having regard to the limitations on the exercise of the taxing power growing out of the nature of a constitutional government, the Federal authorities were justified in employing it as an instrumentality not to collect revenue but to prevent revenue, and when the desired end could be effectually achieved by other and unobjectionable methods: and on this point the court, following a well-established precedent of avoiding as far as possible all conflict between the judicial and legislative powers of the Federal Government, avoided any direct expression of opinion. As the case now stands, and as Congress has refused to discontinue



the tax, it must be regarded as equivalent to an assertion that the Federal Government has the constitutional right to exercise the taxing power not for revenue and not by reason of any necessity that can justify it.\*

During the recent discussion of the silver problem, an eminent American writer on economic questions recommended that a Federal tax should be imposed on silver, varying from month to month according to the changes in its market price as bullion, with the view of establishing and maintaining a parity of value between gold and silver, with, of course, a total disregard of the sole object and justification of taxation—namely, revenue.

But the most curious illustration of the extent to which an entire misconception of the nature and functions of taxation has obtained favour in the United States is to be found in a pamphlet entitled *Rational Principles of Taxation*,† recently published by a Professor of Political Econo-

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\* Concerning the legitimacy and constitutionality of this procedure, a minority of the Finance Committee of the United States Senate, in a report in May, 1892, on a proposition to repeal this tax, expressed themselves as follows: Prior acts imposing taxes of one or two per cent on the notes of State banks, imposed for revenue purposes, the committee regard as entirely justifiable; but in respect to the ten-per-cent tax, which neither produced nor was intended to produce revenue, the committee say:

“This is flagrantly obnoxious in its manifest perversion of the taxing power conferred upon Congress by the Constitution. . . . We think also that a reasonable construction of the taxing-power clause in the Constitution, to wit, ‘the Congress shall have the power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence and general welfare of the United States, would mean that Congress shall pay the public debt, provide for the common defence, and promote the general welfare with the money arising from such taxation, and not that Congress shall have the power to discharge these public duties by the mere framing of a statute without any revenue resulting therefrom. Surely it would be an absurdity for the Constitution to say that Congress shall have the power to discharge the debt of the United States by the mere framing of a statute or the wording of a law. The payment of money or the transfer of things of value is the only way by which a debt can be paid. Therefore the enacting of a law in the name and under the pretence of revenue which is intended to raise no revenue in fact, but which has another and entirely different object, is a gross and fraudulent perversion of the taxing power conferred by the Constitution.”

† *Rational Principles of Taxation*. By Simon N. Patten, Professor of Political Economy, University of Pennsylvania, 1890.

my in the University of Pennsylvania, and included among the authorized publications of the university. In this the author advocates the levying of taxes by the national Government for the purpose of effecting "stability in prices"; and on the assumption that a large and increasing percentage of the national wealth is consumed in the expenses of the retail distribution of commodities, proposes to remedy the evil by imposing a discriminating tax on retail dealers so heavy as to crush out all such whose business and profits in a given time do not exceed a certain amount to be prescribed by statute. Among the anticipated advantages enumerated by the author of the adoption of such a scheme would be the saving of rent "on one half the stores" of cities and a great reduction of rent on the other half. "There would be little need of advertising; . . . the stocks of goods carried by the whole trade would be greatly reduced, from which there would be great saving of capital." But "perhaps the greatest saving of all would arise from the reduction of the force of salesmen and in the cost of delivering goods." And finally, carried away apparently by a beatific vision of the glories of such a tax millennium, the professor exclaims, "Think of all the elements of economy in conjunction, and an idea can be formed of the amount of taxes that could be levied on retail dealers without putting the public to any inconvenience!" \* and "would not the unnecessary capital now absorbed in business be fully sufficient to furnish us with pure water, lovely parks, fine-art galleries," etc.?

**PROSPECTIVE EVILS OF THE PERVERSION OF THE TAXING POWER.**—In view of such experiences and propositions, the questions are most pertinent: How much further is such a perversion of the taxing power to be carried? And is not the entire recent experience of the nation in this respect in the direction of supplanting a "free" by a "paternal" government, which last in turn finds its highest expression in the enactment of sumptuary laws for the

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\* Obviously the author of this scheme supposed that the retail dealers of this country are such simple-minded people that they will cheerfully pay their proposed heavy taxes out of their capital, and not transfer them, through increased prices of their goods, to their consuming purchasers.

control by government of the private life of its citizens? All despotic power is alike in its nature; and, once indulged in, the results are always the same. Once let it be fully accepted as a legitimate feature of public policy that the great public power of taxation may be intrusted to individual hands for private purposes, and the power of life and death will be promptly seized to make the former effective. Once confer upon government the power of dealing out wealth, and the day is not far distant when its recipients will control the Government, and by the use of money elect their magistrates and legislators to perpetuate this policy.

Had the framers of the Federal Constitution even so much as dreamed that the Government to be established under it would ever practically refuse to acknowledge any limitations on its right to interfere with the property of its citizens, would use the taxing power with undisguised intent for promoting private rather than public purposes, and would levy taxes to prevent the payment of taxes, the Constitution itself would never have been called into existence, and the great American Republic would never have had a history.\*

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\* The economic student and writer (and indeed almost the only one) who has discussed this subject in the English language with originality and cogency that is most potent for conviction, is Mr. Theodore Bacon, of Rochester, N. Y., in an article contributed to *The New-Englander* in 1867, and to which the author acknowledges his indebtedness both in respect to ideas and language.

## CHAPTER XII.

### THE SPHERE OF TAXATION PECULIAR TO THE FEDERAL GOVERNMENT OF THE UNITED STATES.

THE United States presents the curious anomaly of a great nation existing under two systems, or dual forms of government; each having a sphere of action peculiar to itself, and both exercising the general functions of government, namely: the executive, the legislative, and the judicial. These two are the Federal or national Government, existing in virtue of an agreement of union entered into originally by thirteen separate and independent States, and known as the Federal Constitution; and next, a system of State or divisional governments, existing in virtue of certain original powers retained by the independent and sovereign parties to the above agreement, and not delegated by them, in entering the Federal Union, to any other or higher sovereignty. At the same time a concession of power to tax or compel contributions from persons, property, and business by each of these two forms of government, in order to defray their necessary expenditures, was obviously essential to their existence and continuance, and was so recognised from the first inception of any compact of union. But how to divide this power—the badge and symbol of sovereignty—between two distinct sovereignties of the same nations, namely, the Federal Congress and the Legislatures of the several States, and impose limitations in both cases on the exercise of a function so vast in its sweep and so imperative in its action, was one of the most difficult problems that confronted the framers of the Federal Constitution, and one without precedent in the world's history. The problem occasioned much discussion, and was really left unsettled—a general power being given to the national legislature, or Congress, “to lay and

collect taxes, duties, imposts, and excises," with the limitation that "all duties, imposts, and excises shall be uniform throughout the United States"; that "no capitation or other direct tax shall be laid unless in proportion to the census"; that "no State shall, without the consent of Congress, lay any imposts or duties on imports or exports," and that no tax or duty shall under any circumstances be laid on articles *exported* from any State. Under such a loose and indefinite condition of things, a conflict of laws and of jurisdictions was inevitable, giving rise to controversies whose determination was really vital to the integrity and efficiency of the Federal Constitution. But happily, owing to the firmness and wisdom of the national tribunal (United States Supreme Court) before which these questions have been brought for adjudication, most of the difficulties which once seemed so formidable have been overcome, and are now mainly interesting as matter of history.

One of the earliest and most celebrated of these controversies culminated, as it were, in a case or suit known as *McCulloch vs. Maryland*, which came before the Supreme Court of the United States and was decided in 1819, under the following circumstances: Congress in 1815 chartered a national (United States) bank, which as a legitimate and authorized feature of its organization established branches in the States, with power to issue circulating notes. This measure proved unpopular in many of the States, and attempts were made by them to resist the various operations of this banking institution within their territory. Foremost among these was the State of Maryland, which, through an enactment of its Legislature, required every bank doing business in the State, and not chartered by the State, either to pay a stamp duty on every note issued, or pay a tax of \$1,500 in gross per annum, and in addition imposed certain penalties on all the officers of a bank violating the law, and upon every person who had any agency in circulating such notes. Contemporaneously, also, the State of Ohio imposed an annual tax of \$50,000 upon the branch bank of the United States established in that State.

The validity of the Maryland statute having been affirmed by the Court of Appeals, the highest court of

law in that State, and an action having been brought for the enforcement of a penalty against an official of the Maryland branch (United States) bank for a violation of the State law, the defendant—one McCulloch, the cashier of the said branch bank—thereupon brought the case (as involving an interpretation of the Federal Constitution) by writ of error before the United States Supreme Court.

A little reflection will abundantly satisfy the reader that the question involved in this procedure was of the greatest importance, inasmuch as it necessitated certain rational and fundamental conclusions that had not previously been authoritatively reached and popularly accepted, respecting the nature and power of the Federal Government; and a definite interpretation of the letter and spirit of certain features of the Federal Constitution which, as the action of the States before noticed demonstrated, had, to say the least, been heretofore regarded as ambiguous. So that, whatever might be the decision of the court, the consequences were certain to be most momentous. Thus, if the right of a State to tax—which practically involved the right to destroy the instrumentalities of the Federal Government, was denied, then such Government rested on sure foundations. If, on the other hand, to quote the language of the court, “the right of the State to tax the means employed by the General Government be conceded, the declaration that the Constitution and laws made in pursuance thereof shall be the supreme law of the land is an empty and unmeaning declaration,” and the United States, in the sense of a nation, would practically cease to exist. Taking also into account the increase in the number of States that would have to harmonize if anything was accomplished in a new constitutional convention, and the number of new antagonizing elements on the part of the several States that had arisen—the vexing question of the future tolerance and extension of slavery, which finally eventuated in civil war, the power of Congress to create banking corporations, and the right of the Legislatures of the States to subject them to taxation, and the like—and it is very doubtful whether any new Federal Constitution could have been established. As a matter of fact, the Federal Government and the union of the States came nearer disruption and dissolution

in 1819 than when, forty-two years subsequently, Fort Sumter was fired upon and the flag of the Union forcibly hauled down—which latter events are generally regarded as constituting the leading features of the constitutional history of the United States. And this situation was so well recognized by Chief-Justice Marshall (to whom the nation is indebted for its preservation to a greater degree than has been generally recognized) as to draw from him the remark, preliminary to announcing the decision of the court, that “no tribunal could approach such a question as was involved without a deep sense of its importance and of the awful responsibility involved in the decision.” \*

The decision of the court was unanimous that “the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government; and that the law passed by the Legislature of Maryland imposing a tax on the Bank of the United States is unconstitutional and void.”

“If we apply,” said the Chief Justice, “the principle for which the State of Maryland contends to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the Government, and of prostrating it at the foot of the States. The American people have declared their Constitution and the laws made in pursuance thereof to be supreme; but this principle would transfer the supremacy, in fact, to the States. If the States may tax one instrument employed by the Government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax patent rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the Government, to an excess which would defeat all the ends of government. This was not intended by the American people.

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\* “No more impressive words are to be found in any English or American adjudication than those uttered by Chief-Justice Marshall as a preamble to the judgment in this most interesting and important case.”—*Francis Hillard, The Law of Taxation.*

They did not design to make their Government dependent on the States."

The court, however, held that its decision did not deprive "the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operation of the bank, and is consequently a tax on the operation of an instrument employed by the Government of the Union to carry its powers into execution. Such a tax must be unconstitutional." \*

The successful counsel in this case were Daniel Webster and William Pinkney, and in the course of his decision the Chief Justice complimented the counsel on both sides as maintaining the affirmative and negative with a splen-

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\* The following additional extracts from the decision of the court in this celebrated case will help to a further elucidation of its involved subject-matters:

"In the case now to be determined," said the chief justice, "the defendant, a sovereign State, denies the obligation of a law enacted by the Legislature of the Union; and the plaintiff, on his part, contests the validity of an act which has been passed by the Legislature of that State. The Constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the Government of the Union and of its members are to be discussed; and an opinion given which may essentially influence the great operations of the Government. No tribunal can approach such a question without a deep sense of its importance and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation—perhaps of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme Court of the United States has the Constitution of our country devolved this important duty. The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but it does not extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States. We think it demonstrable that it does not. These powers are not given by the people of a single State; they are given by the people of the United States to a Government whose laws, made in pursuance of the Constitution, are declared to be supreme. Consequently, the people of a single State can not confer a sovereignty which will extend over them."



dour of eloquence and a strength of argument seldom, if ever, surpassed.

It may also be added that no decision of the United States Supreme Court, or of any other court in the United States, has since impugned the correctness of the principle upon which the case of *McCulloch vs. Maryland* was decided. A brief notice, however, of subsequent judicial proceedings is interesting and necessary to complete the history of this celebrated case.

Thus, the Legislature of Ohio having, as before stated, imposed an annual tax of \$50,000 upon the branch of the Bank of the United States established in that State *before* the decision in the *McCulloch* case, the State officers, even *after* the decision, proceeded to levy and collect the tax. Thereupon the case was again brought before the United States Supreme Court on an application for injunction, and was reargued, with reliance upon the point that the bank was a mere private corporation, whose chief object was individual trade or profit. The court, however, at once reaffirmed its former judgment, and held that the bank was a public corporation, created for national purposes, and an instrument for carrying into effect the national powers. At the same time the opinion of the court in the *McCulloch* case, that its decision "did not deprive a State of any resources it originally possessed," remained unaffected.

Subsequently a case came before the United States Supreme Court (*Weston vs. the City of Charleston, S. C.*) \* in which the question involved was the right of a State to tax stock issued for loans made to the United States, whether on the stock, *eo nomine* or included in the aggregate of the tax-payers' property to be valued at what it was worth. The court, by Chief-Justice Marshall, held "*that a tax on stock of the United States, held by an individual citizen of a State, is a tax on the power to borrow money on the credit of the United States, and can not be levied on the authority of a State consistently with the Constitution,*" and, further, "*that if the right to impose a tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the juris-*

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\* 2 Peters, 449,

*diction of the State or corporation which imposes it, which the will of such State or corporation may prescribe. Can anything,"* continued the Chief Justice, "be more dangerous or more injurious than the admission of a principle which authorizes every State and every corporation in the Union which possesses the right of taxation to burden the exercise of this (borrowing) power at their discretion?" A tax on the stock or bonds of a State is therefore a tax on the borrowing power of such State.

The court further held that a tax of this description was a tax upon contracts,\* using the following language: "Congress has power to borrow money on the credit of the United States. The stock it issues is evidence of a debt created by the exercise of this power. *The tax in question is a tax upon the contract subsisting between the Government and the individual.* It bears directly upon the contract. While subsisting and in full force, the power operates upon the contract the instant it is framed, and must imply a right to affect that contract. If the States and corporations throughout the Union possess the power to tax a contract for the loan of money, what shall arrest the principle in its application to every other contract?

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\* What interpretation the Supreme Court puts upon the word "contract," as found in that clause of the Constitution of the United States which provides "that no State shall pass any law impairing the obligations of contracts," is made clear by the following language employed by Chief-Justice Marshall in giving the opinion of the court in the celebrated case of the Trustees of Dartmouth College *vs.* Woodward: "The term contract must be understood as intended to guard against a power of at least doubtful utility, the abuse of which had been extensively felt, and to restrain the Legislature in future from violating the right to property; that anterior to the formation of the Constitution a course of legislation had prevailed in many if not all of the States which weakened the confidence of man in man, and embarrassed all transactions between individuals, by dispensing with a faithful performance of engagements. To correct this mischief by restraining the power which produced it, the State Legislatures were forbidden 'to pass any law impairing the obligation of contracts'—that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself; and that, since the clause in the Constitution must in construction receive some limitation, it may be confined, and ought to be confined, to cases of this description—to cases within the mischief it was intended to remedy."

What measure can Government adopt which will not be exposed to its influence? The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely."

As a sequence to these decisions of the United States Supreme Court, not only has the general principle that no State of the Federal Union can impose any tax upon any agency of the Federal Government—as its mails, its buildings, its lands, its ships, its money, and the like—come to be universally recognised as in the nature of an unquestionable law of the land, but the question of the application of the principle in respect to many cases to which some latitude of opinion was legitimate, has been specially and definitely determined. Thus, for example, it has been established, that a State can not impose license taxes upon persons passing through or coming into it merely for a temporary purpose, especially if connected with interstate commerce; a State, furthermore, can not enact any law or establish any regulation affecting interstate commerce, inasmuch as the same would be an unauthorized interference with the power given to Congress on the subject. Interstate commerce also can not be taxed at all by a State statute, even though the same amount of tax should be laid on commerce which is carried on solely within the State; and the negotiation of sales of goods, which are in another State, for the purpose of introducing them into the State into which said negotiation is made, has been held to be interstate commerce. A tax levied by the State of Michigan of one cent and a half a ton on iron ores, if taken out of the State for smelting, while exempt if smelted within the State, was held by the United States Supreme Court to be a tax on commerce and therefore void.

A State statute which levies a tax upon the gross receipts of railroads for the carriage of freights and passengers into, out of, or through a State has been held to be a tax upon commerce between the States, and therefore

void. Under the provision of the Federal Constitution that "no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws," some difficulty has been experienced in indicating with sufficient accuracy for practical purposes, the point of time at which articles brought into the country from abroad cease to be regarded as imports in the sense of constitutional protection, and become liable to State taxation. But it has been held by the United States Supreme Court that where the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has lost its distinctive character as an import, and become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty upon imports to escape the prohibition in the Constitution. The deductions from a contrary rule would be manifestly as follows: "No goods would be imported if none could be sold. The same power that imposes a light duty can impose one that amounts to prohibition. A duty on imports is a tax on the article, which is paid by the consumer. The great importing States would thus levy a tax on the nonimporting States," as was done under articles of the Confederation prior to the adoption of the Federal Constitution. "This would necessarily produce countervailing measures."

In the case of *Brown vs. Maryland*, where the latter State, for revenue purposes, required a merchant to take a license and pay fifty dollars before he should be allowed to sell a package of imported goods, the court (by Chief-Justice Marshall) held that this tax, *though indirect in form* (i. e., a license on the person of the importer), was in fact equivalent to a duty on imports, and therefore illegal; and that the right to import carried with it the right to sell.\*

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\* As an extension of the history of this case the following futile criticism of a former chairman of the Board of Assessors of the City of Boston (report for 1871) is pertinent: "There is certainly a broad distinction between the prohibition of the right to *sell* an imported article and the right to *tax* the same as property."

This decision has been carefully recognised by the authorities of the several States in dealing with imported liquors under local license acts. "Under its police powers there is no constitutional restraint on a State prohibiting the retail and internal traffic in ardent spirits. But a State is at the same time bound to receive and permit the sale by the importer of any article of merchandise which Congress authorizes to be imported, but it is not bound to abstain from the passage of laws which it deems proper to guard the health or morals of its citizens, although the effect of such laws may be to discourage importation, and diminish the profits of the importer and the revenue of the General Government."—*Burroughs, On Taxation.*

**LIMITATIONS OF THE TAXING POWER OF THE FEDERAL GOVERNMENT.**—If the States can not tax the agencies or instrumentalities by which the Federal Government performs its functions, it would seem clearly to follow that for like reasons the Federal Government can not tax State instrumentalities or agencies.

That such reciprocal limitations are natural and necessary, and exist by implication, not only in the Constitution of the United States, but also in the very structure of the Federal Union, must be evident, when one reflects that otherwise the Federal Government on the one hand, and the governments of the States on the other, might impose taxation to an extent that would cripple, if not wholly defeat, the operations of the two authorities, each within its respective and proper sphere of action. Or, in other words, if the Federal and the State governments had each unrestricted power to tax, or, what is equivalent, "the power to destroy," they might, and as experience proves

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The decision of the United States Court was to the effect that the State could not enact a law that would prevent the sale of such property, and did not touch the question of the right to tax. In a recent decision of the Supreme Judicial Court of Massachusetts (*Dunbar vs. Boston*, 101 Mass., 317), where the question was raised that the Commonwealth could not tax a stock of liquors, the sale of which, by her laws, she had declared illegal, the court sustained the tax, upon the ground that the case did not show that the goods could not be legally sold. As the law stood at the time the decision was given, but one class of the plaintiff's stock of intoxicating liquors could legally be sold; and that was his *importations in the original packages.*"

they probably would, effectually destroy efficient government in both cases, and the necessity and validity of such reciprocal limitations have been recognised and enforced by the courts of the United States whenever this question has been brought before them for adjudication. Thus, in the case of *Day vs. Buffington*, United States Circuit Court, Massachusetts District, it was held that the salary of a State official, in this particular instance a judge of probate, could not be legally subjected to assessment for an income tax, under the laws of the United States authorizing the assessment and collection of internal revenue; and Congress, some years since, acting under the advice of the United States Supreme Court, repealed so much of an internal revenue act as previously required the affixing of stamps to State processes, warrants, commissions, etc. In the case of *Warren vs. Paul*, 22 Ind., 279, the court used the following language: "The Federal Government may tax the Governor of a State or the clerk of a State court and his transactions as an individual, but not as a State officer. This must be so, or the State may be annihilated at the pleasure of the Federal Government. The Federal Government may, perhaps, take by taxation most of the property in a State if exigencies require, but it has not a right by direct or indirect means to annihilate the functions of the State government."

In a recent debate in the United States Senate on a proposition to appropriate public money for the purpose of establishing and maintaining higher institutions of learning in the District of Columbia than were offered by its common schools, a leading Senator (John Sherman), others concurring, is reported as expressing himself as follows:

"I concur entirely in the opinion expressed by the Senator from Rhode Island (Mr. Aldrich) that we have no right to use the public money to establish business high schools. It is the duty of every community to give the children who are growing up a good common-school education, which covers a pretty wide range now, according to the general ideas of our people, and there the duty should stop. Money for this purpose should be contributed by private persons. We do our duty when we furnish a fair, common-school education to the children that are grow-

ing up among us"—i. e., in the District of Columbia—"and that is all we ought to contribute."

CAN CONGRESS AUTHORIZE THE STATES TO TAX NATIONAL INSTRUMENTALITIES?—In the popular discussions which have occurred in recent years in reference to the taxing of United States securities, the position has been not infrequently taken that it would have been just and expedient on the part of Congress, at the time of the creation of the present national debt, to have allowed the separate States to tax the evidences of such debt (i. e., the bonds) in the possession of their citizens, subject to a limitation that the same should not be taxed at any different rate than other "moneyed capital." A full consideration of the whole subject will, however, suggest a doubt whether Congress possesses the power to grant any such authorization, inasmuch as to have done so would have been equivalent to authorizing the States to do an act which in itself is unconstitutional—a thing which it is self-evident that Congress can not do. Thus "*the power to tax*," says Chief-Justice Marshall, in giving the opinion of the Supreme Court denying the right of Maryland to tax the Bank of the United States, "*involves the power to destroy*"; and in the case of *Weston vs. The City of Charleston*, the same court, by the same eminent authority, held further, as before shown, "*that if the right to impose a tax exists, it is a right which in its nature acknowledges no limits*." For Congress, therefore, to have authorized the States to tax "national agencies" would have been equivalent to authorizing the exercise of a right to destroy; which right, the Supreme Court has held, can not, from its nature, when once existing, be limited.

ALIENATION OF THE TAXING POWER.—The application of the decision by the United States Supreme Court in the celebrated Dartmouth College case, has resulted in the general acceptance of the legal principle that a charter of incorporation by a State is a contract between the State and the incorporators; and if such charter contains a clause exempting the incorporators entirely from taxation, or for a definite period, a subsequent Legislature can not repeal the clause of exemption. Within a recent period the interest involved in this question has become so great, and the power of wealthy corporations who claim the benefit



of this principle is so extensive, that it is desirable to briefly call attention to views of dissenting legal authorities and dissenting State courts.

“It is claimed that the power of taxation is one of the sovereign powers of the State necessary to its continued existence, and that it was never contemplated, when the people through their Constitutions delegated to their representatives in Legislature assembled the power to make laws for the good of the people of the State, that this grant of legislative power carried with it the right to barter away with private corporations one of the essential prerogatives of the Government, the very life-blood of the State.” \*

How one of the States of the Union—Connecticut—has recently thrown away valuable public franchises is thus graphically described by one of the leading and authoritative newspapers of New England—i. e., the Springfield Republican. We have here the astonishing fact that over seventy per cent of the stock capital of twenty-six monopoly electric or “trolley” companies operated in that State has been issued for something other than money, (cash) paid in, and hence may be said to represent nothing but what is popularly characterized as “water.” The bonded debt of these roads amounts to \$8,690,100, or over three times the amount of their cash stock—i. e., \$2,671,240. This bonded debt, standing in comparison with a total stock issue, strikingly illustrates what has taken place: *first*, a gratuitous grant or franchise; *second*, an issue of bonds thereon to build the roads; third, a share capital, the product of the printing press, and representing no value whatever except as an instrumentality for obtaining extra profits and exceptional legislation through its distribution.

“This watered capitalization will in time, of course, pass into innocent hands, and the ‘rights’ of the monopolies in the matter of charges will all be gauged by the yearly revenue in its relation to this totality of nominal capital. The stock waterers will have sold their water at handsome figures and made off, and the purchasers of

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\* Burroughs On Taxation, from which authority the writer is mainly indebted in his presentation of this important subject.



the water must henceforward, of course, be considered legitimate investors whose holdings are entitled to full consideration; and only until monopoly charges suffice to pay eight and ten per cent on all capital, watered or otherwise, will it be safe for any community to demand a reduction of charges without bringing upon itself the charge of being favourable to anarchy and confiscation.

“The people of Connecticut are preparing the way to pay handsomely for their electric transportation. The penalty of present neglect to guard and restrict closely the capitalization of these monopolies will fall in ugly force upon this and future generations; and when the time is ripe for municipal or State assumption of the monopolies, as may some time happen, the people will have the pleasure, no doubt, of paying more than face value for the water now so freely allowed to issue.” \*

On this subject the late Chief-Justice Taney expressed his views as follows, in a case that came up before the United States Supreme Court in 1853: “The powers of sovereignty confided to the legislative body of a State are undoubtedly a trust committed to them to be executed to the best of their judgment for the public good; and no one Legislature can by its own act disarm its successors of any of its powers or rights of sovereignty confided by the people to the legislative body, unless they are authorized to do so by the Constitution under which they are elected. They can not, therefore, by contract, deprive a future Legislature of the power of imposing any tax it may deem necessary for the public service, or of exercising any other act of sovereignty confided to the legislative body, unless the power to make such contract is conferred upon them by the Constitution of the State. And in every controversy on this subject the question must depend on the Constitution of the State, and the extent of the power thereby conferred on the legislative body.”

The subject again came up before the United States Supreme Court in 1869, 1871, and 1872, when the question at each time was treated as *res adjudicata* (definitely settled). In the first of these instances Justice Miller thus expressed his views: “We do not believe that any

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\* On a franchise tax, see the last chapter in this volume.

legislative body, sitting under a State Constitution of the usual character, has a right to sell, to give, or bargain away forever the taxing power of the State. This is a power which, in modern political societies, is absolutely necessary to the continued existence of every such society. While under such forms of government the ancient chiefs or heads of the government might carry it on by revenues owned by them personally and by the exaction of personal service from their subjects, no civilized Government has ever existed that did not rely upon taxation in some form for the continuance of that existence. To hold, then, that any one of the annual Legislatures can, by contract, deprive the State forever of the power of taxation is to hold that they can destroy the Government they are appointed to serve, and that their action in that regard is strictly lawful. The result of such a principle, under the growing tendency to special and partial legislation, would be to exempt the rich from taxation and cast all the burden of the support of government on those who are too poor or too honest to purchase such immunity."

Like dissenting views have also found expression in various State courts. Chief-Justice Beasley, of New Jersey, for example, in commenting on the proposition that a charter of incorporation is a contract, says: "The entire contract on the part of a State, implied in such cases, is the supposed legislative agreement not to alter or recall the privilege granted. No other stipulation on the part of the State was ever suggested to exist, and it was the imagined existence of such stipulation alone which converted what else, in all its essential qualities as well as in its form, was an act of legislation, into a contract on the part of the community with the corporators. Without such stipulation, having an obligatory force, I am wholly unable to conceive the ground of difference between the charter of a corporation and any other act of legislation. If a statute lay no obligation on the State to do or refrain from doing a particular thing or one or more particular things, such an enactment seems to me to be a pure act of legislation, and in no sense a contract." "A law which seeks to deprive the Legislature of the power to tax must be so clear, explicit, and determinative that there can be neither doubt nor controversy about its terms, or the consideration which

renders it binding. Every presumption will be made against its surrender, as the power was committed by the people to the Government to be exercised, and not to be alienated." (47 Missouri, 158.)

And Justice Cooley (one of the justices of the Supreme Court of Michigan), in reviewing the action of the United States Supreme Court, says: "It is not very clear that this court has ever at any time expressly declared the right of a State to grant away the sovereign power of taxation." A court in Pennsylvania has also said: "Revenue is as essential to government as food to individuals; to sell it is to commit suicide." (30 Pennsylvania, 9.)

Turning to English jurisprudence, we have an opinion of Edmund Burke that the charter of the East India Company, in virtue of which great authority was exercised, "was a charter to establish monopoly and create power," and not entitled to the protection of the various charters of English liberty.

So long, however, as the decision of the United States Supreme Court in the Dartmouth College case is not reversed by the same court, the above and many other like expressions of opinion on the part of judges and men learned in the law and in constitutional history have nothing of practical significance.

## CHAPTER XIII.

### RULES OR MAXIMS ESSENTIAL TO AN ADMINISTRATION OF RIGHTFUL TAXATION UNDER A CONSTITUTIONAL OR FREE GOVERNMENT.

#### PART I.

A PRESENTATION and discussion of the rules or maxims of administration which are in conformity with the foregoing exposition and discussion of the origin and sphere of taxation, and the limitations on the exercise of this great power which are essential to the existence and continuance of a constitutional and free government, are next in order for the proper development and understanding of the general subject under consideration. Under such a government—one happily characterized and defined by President Lincoln as “of the people, by the people, and for the people”—the following rules or maxims governing the administration of its lawful taxation would seem to be almost in the nature of economic axioms:

First. *No tax should be imposed by a state or government except by the consent of the people from whom it is to be collected, given either directly or by their authorized representatives in Congress, Legislature, or Parliament assembled.*

Second. *All taxes or enforced contributions levied by the state in virtue of its sovereignty should be solely (singly) and exclusively for public purposes.*

Third. *The sphere of taxation should be limited to persons, property, and business exclusively within the territorial jurisdiction of the taxing power.*

Fourth. *Taxes should be reasonable, regular, and not arbitrary as respects method, time, and place of assessment and payment, and, above all, proportional.*

Fifth. *Taxation should not be employed as an agency or for the purpose of enforcing morality, or as an instrumentality for correction or punishment.*

Sixth. *No tax should be levied the character and extent of which offer, as human nature is generally constituted, a greater inducement to the taxpayer to evade rather than pay.*

With a view of determining whether the above six propositions are so far fundamental and indisputable as to warrant their characterization as "economic axioms," attention is next asked to the following summary of reasons, or evidence to that effect, which may be separately adduced in respect to each one of them, commencing with the first—*that no tax should be imposed by a state or government except by the consent of the people from whom it is to be collected, given either directly or by their authorized representatives in Congress, Legislature, or Parliament assembled.* "The right is then wedded to the power, and representation and taxation become correlative."—*Miller, Justice Samuel F., on the Constitution.*

It requires no great amount of thought to see that the principle involved in this proposition is not only an essential feature of every *just* system of taxation, but also the primary and essential condition of the existence of every system of free or popular government. If this is not at once apparent, the following brief historical retrospect ought to make it so:

The first great effort recorded in English history for its recognition and establishment as a fundamental principle of government was made by the English barons in 1215, in their notable struggle with King John, and resulted in the incorporation in the Great Charter (Magna Carta) of England of a provision which substantially forbade the king from imposing any taxes, except by permission of the General Council of the nation, duly summoned under writs regularly issued.\* And it is interesting to

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\* The exact language of the charter was: "No scutage or aid shall be imposed in our kingdom unless by the general course of the nation, except for ransoming our person [i. e., the king], making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be taken a reasonable aid"; the barons in turn agreeing that "we will not for the future grant to any one that he may take aid of his own free tenants," other than the aids above stated.

note, as showing the broad spirit of generous patriotism animating these rough old barons in their contest with King John, that they stipulated in the Magna Carta which they extorted from him that every limitation imposed in it for their protection upon the feudal rights of the king should be also imposed upon their rights as *mesne* lords (i. e., lords superior in the second degree) in favour of the undertenants who held of them.

In the many confirmations of the Great Charter in the ensuing reigns of Henry III and Edward I, its vital clauses as to taxation and the National Council were, however, invariably and intentionally omitted; and the latter king so reasserted the taxing power of the crown as to alarm the nation and occasion a revolution (Barons' War, 1297), which for many subsequent years prevented any like assumption on the part of Edward's successors. Under the reign of Charles I the authority to levy and collect taxes in England was, however, again claimed—as it was in all the other European states—to be vested exclusively in the king; and on the trial of John Hampden, in 1636, for his refusal to pay a tax known as “ship money,” arbitrarily levied by the king for the maintenance of a naval force, this was the position taken by the crown lawyers representing the prosecution and accepted as valid by the judges in their verdict, the attorney general using in his plea language almost identical with that employed by Louis XIV, before cited, in defining his prerogative.\*

But when absolutism in government was overthrown in England in 1653, and a constitutional government established, no one principle was recognised as more fundamental than that the executive could levy no taxes except such as had been granted by the people taxed, through their representatives; and one of the very first statutes enacted by Parliament in 1689, under the reign of William and Mary, and accepted by the crown, was that all levying of money for the crown by pretence of prerogative should be hereafter and forever illegal; and secondly, in the latter third of the next century (1770), the unqualified affirmation and defence of the principle that those who pay the taxes should control the levying of them became the

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\* See page 128, *ante*.

primary cause of the American Revolution, and eventuated in calling the United States into existence. And hence, by reason of such experiences, it has become a part of the common law of all English-speaking people that the taxing power inherent in the state is vested exclusively in the legislative department of its government.

Second. *All taxes or enforced contributions levied by a state in virtue of its sovereignty should be solely (singly) and exclusively for public purposes.*

Another and perhaps a more popular way of expressing this principle would be, to put it in the form of an affirmation, namely: *All taxes that the people pay, the government should receive.*

All recognised authorities, judicial and economic, are agreed in regarding the above proposition as in the light of a political axiom from which there can be no rational dissent. From a great number of confirmatory and illustrative legal opinions and decisions the following are especially worthy of attention:

“No State government, nor that of the United States, nor any other authority professing a regard for the rights of the people, is at liberty to take money out of their pockets for any other than a public purpose. Whenever it can be discovered that a tax is levied for something which properly can not be called such, it may be successfully resisted by all the measures that the law allows in courts of justice.”—*Miller, Justice S. F., Lectures on the Constitution of the United States, p. 242.*

“Taxation, by the very meaning of the term, implies the raising of money for public uses, and excludes the raising of it for private objects and purposes.”—*Allen vs. Inhabitants of Jay, 60 Maine* (per Appleton, C. J.).

“Taxation is allowable only for public purposes. The name (taxation) is not rightfully applied with reference to objects of a private nature, such as a bridge, manufactory, or foundry owned by individuals. An act of the Legislature authorizing a levy for a mere private purpose, or for a purpose which, though public, is one in which the people from which it is exacted have no interest, would not be a law, but a judicial sentence.”—*Hillard, Law of Taxation, 1875.*

*What are public purposes?* This question is an embar-

rassing one, and in attempting to answer it there is opportunity for much latitude of opinion. In the first place, the ordinary or dictionary definition of the term "public," as forming a part of the above question, is certainly infelicitous and ambiguous—namely, "pertaining to a nation, state, or community; extending to the whole people" (Webster). Thus, for example, under a purely despotic form of government any exaction of contributions (taxes) from the people, and expenditures resulting therefrom, which the heads of the state may decree, be it for the expenses of a harem, the amusement or dignity of royalty, the reward or pensions of court favourites, or the maintenance of a military force for the subjugating of the people, would be held to be for a public purpose, and any subject that should undertake to contravene this assumption would be amenable to punishment and perhaps to the charge of treason.

On the other hand, under all popular or constitutional governments it would not probably be disputed, that taxation should have but one object and taxes but one destination—namely, to supply the expenses necessitated by those services which, according to established usage, it is the business of government to provide, and in contradistinction to those which private inclination, interest, or liberality will supply whenever a necessity or demand for such action becomes sufficiently manifest. Any form of levy, therefore, under such a government upon the person or property of its citizens that does not conform to these conditions is not for a public purpose and is not entitled to be called taxation.

The following further amplification of these propositions by the Supreme Court of Massachusetts has probably also the unqualified indorsement of all judicial authorities in the United States:

"The incidental advantage to the public, or the State, which results from the promotion of private interests and the prosperity of private enterprise or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary. It is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interest to be



affected, nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. *The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than upon force.*"—*Lowell vs. Boston*, 111 Mass., 454.

"It has become a favourite maxim that it is the duty of government to promote the happiness of the people. The phrase may be interpreted so as to mean well, but it is a very inaccurate and unhappy one. It is the inalienable right of men to pursue their *own* happiness, each man under such restraint of law as will leave every other man equally free to do the same. The happiness of the people is the happiness of the individuals who compose the mass. Speaking now with reference to those objects only which human laws can reach and influence, he is the happy man who sees his condition in life constantly and gradually, though it may be slowly, improving. Let government keep its hands off, do nothing in the way of creating the subject-matter of speculation, and things naturally fall into this channel."—*Sharswood, Legal Ethics*.

The distinction between a public and a private purpose in respect to taxation, however, is often a matter of great difficulty and embarrassment; and one eminent jurist and writer on taxation (Cooley) has indeed declared that "there is no such thing as drawing a clear line of distinction between purposes of a public and those of a private nature." But the question at issue has been so often made the subject of definition and illustration by the highest courts of the United States—speaking through jurists of the highest conceded ability—that, although complete unison of opinion does not now and probably never will exist as to whether certain particular purposes, as expenditures by the State for bounties, facilitating transportation, education, charities, amusements, celebrations, and the like, are within the requirements to make them public. The sphere for disagreement has, however, within recent years greatly narrowed. One of the most clear and comprehensive of illustrations on this topic, given by the Supreme Court of Michigan (*People vs. Township*, 20 Michigan, 452), through Justice Thomas M. Cooley, was as follows:

“In respect to ‘certain things of absolute necessity to civilized society,’ the State is precluded either by express constitutional provisions or by necessary implications, from providing for at all, and which are thus left wholly to the fostering care of private enterprise and private liberality. We concede, for instance, that religion is essential, and that without it we should degenerate to barbarism and brutality; yet we prohibit the State from burdening the citizen with its support, and we content ourselves with recognising and protecting its observance on similar grounds. Certain professions and occupations in life are also essential, but we have no authority to employ the public money to induce persons to enter them. The necessity may be pressing and to supply it may be in a certain sense to accomplish a public purpose, but it is not a purpose for which the power of taxation may be employed. The public necessity for an educated, skilful physician in some particular locality may be great and pressing, yet, if the people should be taxed to hire one to locate there, the common voice would exclaim that the public moneys were being devoted to a private purpose. The opening of a new street in a city or village may be of trifling importance as compared with the location within it of some new business or manufacture; but while the right to pay out the public funds for the one would be unquestionable, the other by common consent is classified as a private interest which the public can aid as individuals, if they see fit, while they are not permitted to employ the machinery of government to that end. Indeed, the opening of a new street in the outskirts of a city is generally very much more a matter of private interest than of public concern; yet, even in a case where the public authorities did not regard the street as of sufficient importance to induce their taking the necessary action to secure it, it would not be doubted that the moment they should consent to so accept it as a gift, the street would at once become a public object and purpose upon which the public funds might be expended with no more restraints upon the action of the authorities in that particular than if it were the most prominent and essential thoroughfare in the city.

“By common consent, also, a large portion of the most urgent needs of society are relegated exclusively to the law

of demand and supply. It is this in its natural operation and without the interference of the Government that gives us the proper proportion of tillers of the soil, artisans, manufacturers, merchants, and professional men, and that determines when and where they shall give to society the benefit of their particular services. However great the need in the direction of any particular calling, the interference of Government is not tolerated, because, though it might be supplying a public want, it is considered as invading the domain that belongs exclusively to private inclination and enterprise. We perceive, therefore, that the term '*public purpose*,' as employed to denote the objects for which taxes may be levied, has no relation to the urgency of the public need or to the extent of the public benefit which is to follow. It is, on the other hand, merely *a term of classification to distinguish the objects for which, according to settled usage, the Government is to provide, from those which, by the like usage, are left to private inclination, interest, or liberality.*"

Under a constitutional and representative form of government the determination of what constitutes a public purpose in respect to taxation rests primarily in the legislative department of such government; but legislative determination on this subject is not absolutely conclusive, for the question ultimately is one of law. If this was not so, a Legislature would possess unlimited power to make anything lawful which it might call taxation, which would be equivalent to an unlimited power to plunder the citizen.\*

Brief references to certain other court cases, in which the validity of this claim that certain taxes, or acts involving the imposition of taxes, were for public purposes, was the question at issue, will also help to an understanding of the subject.

In 1872 the city of Boston was authorized by the Legislature of Massachusetts to issue bonds to the amount of \$20,000,000, the proceeds to be loaned to persons whose

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\* In every case in which the Legislature shall have clearly exceeded its authority in this regard, and levied a tax for a purpose not public, it is competent for any one, who in person or property is affected by the tax, to appeal to the courts for protection.—*Cooley, Law of Taxation*, p. 55.

property had been destroyed by a recent great fire. The Supreme Court of Massachusetts held that, although such "a promotion of the interests of individuals might result incidentally in the advancement of the public welfare," the measure was, "in its essential character, a private and not a public object," and therefore unconstitutional.—*Lowell vs. Boston*, 111 Mass.

A similar statute enacted by the Legislature of South Carolina in aid of sufferers by a fire in Charleston was also declared by the Supreme Court of that State as unconstitutional.—*Feldman & Co. vs. City of Charleston*, S. C., 57.

In 1870 the town of Jay, in Maine, voted to loan \$10,000 to a firm of manufacturers, on condition that they would move their works to the town and establish and maintain them there for ten years. This vote, although ratified by an act of the Legislature, the Supreme Court of the State declared void.—*Allen vs. Jay*, 60 Maine, 124.

In connection with this case the Legislature of the State of Maine officially put the following question to the justices of its Supreme Court: "Has the Legislature authority under the Constitution to pass laws enabling towns by gifts of money to assist individuals or corporations to establish or carry on manufacturing of various kinds within or without the limits of said towns?" The question was answered in the negative. The court used the following language: "There is nothing of a public nature any more entitling the manufacturer to public gifts than the sailor, the mechanic, the lumberman, or the farmer. Our Government is based on an equality of rights. The State can not rightfully discriminate among occupations; *for a discrimination in favour of one branch of industry is a discrimination adverse to all other branches.* The State is equally bound to protect all, giving no undue advantage or special or exclusive preference to any. Taxation in aid of private enterprise is to load the tables of the few with bounty that the many may partake of the crumbs that fall therefrom."

In 1875 the Legislature of Kansas authorized townships to issue bonds for the purpose of raising money to be applied for the relief of such farmers within their limits as had been deprived, by a failure of crops, of seed

with which to plant for a new season. This authorization was held by the court (Justice Brewer) to be unconstitutional, on the ground that the use of public moneys for the accommodation of a certain class was not a public purpose—"not for the benefit of the indigent, but of those who have fields to fill and stocks to care for"—and that if the principle involved is once recognised, it may be invoked with equal propriety in aid of other or all classes.—*State vs. Osawkee*, 14 *Kansas*, 488.

In the State of New York its Court of Appeals has held void an act of the Legislature authorizing a village to take stock in a manufacturing corporation, and to issue bonds to raise the money to pay for such subscription, and to levy taxes for the payment of the principal and interest on said bonds. (*Weismer vs. Douglas*, 64 N. Y., 91.) In a similar case (*Sweet vs. Hurlbert*, 51 Barber) Justice James expressed himself as follows:

"If this can be done, it is legal robbery; less respectable than highway robbery in this, that the perpetrator of the latter assumes the danger and infamy of the act, where this act has the shield of legislative irresponsibility."

In *Cole vs. La Grange* (113 U. S.), the case turned on an act of the Legislature of Missouri authorizing the city of La Grange, whenever two thirds of the resident taxpayers signified their approval at a special election, to levy a tax not exceeding two per cent per annum on the assessed value of the real and personal property in the city, to pay for a donation or subscription to the stock of a manufacturing company. The court held the act void; the opinion, written by Mr. Justice Gray, embodying the following language:

"The general grant of legislative power in the Constitution of the State does not enable the Legislature, in the exercise either of the right of eminent domain or of the right of taxation, to authorize counties, cities, or towns to contract, for private objects, debts which must be paid by taxes. It can not, therefore, authorize them to issue bonds to assist merchants or manufacturers, whether natural persons or corporations, in their private business. These limits of the legislative power are now too firmly established by judicial decisions to require extended argument upon the subject."

In *Burlington vs. Beasley* (94 U. S., 310), however, taxation in aid of a public gristmill, the tolls of which the Legislature would have a right to regulate, was sustained; the construction of such a mill in a new country being probably a public necessity, and not possible without public aid.

But perhaps the most weighty opinion on this question is that of the United States Supreme Court in the case of the *Loan Association vs. Topeka*, 20 Wall, 655 (before referred to on page 231). In 1872 the Legislature of Kansas passed an act authorizing cities and counties to issue bonds for the purpose of encouraging the establishment of manufactures and other like enterprises; and under this act the city of Topeka created and issued its bonds, to the extent of \$100,000, and gave the same "as a donation," a majority of voters approving, to an iron-bridge company, as a consideration for establishing and operating their shops within the limits of the city. The interest coupons first due on these bonds were promptly paid by the city out of a fund raised by taxation for that purpose, but subsequently, when the second coupons became due, and the bonds had passed out of the possession of the bridge company by *bona fide* sale to a loan association, the city meanly repudiated its obligations, on the ground that the Legislature of Kansas had no authority under the Constitution of the State to authorize the issue of bonds, the interest and principal of which were to be paid from the proceeds of taxes, for any such purpose as the encouragement of manufacturing enterprises. Legal proceedings to enforce payment were thereupon commenced by the bondholders in the United States Circuit Court, and judgment having been there given for the city, the case was appealed to the United States Supreme Court, where with only one dissenting voice (Judge Clifford) the judgment of the lower court was affirmed.

The following extracts from the opinion of the court, given by Justice Miller, will forever stand as embodying economic and legal principles of the highest importance:

"We have established, we think, beyond a cavil that there can be no lawful tax which is not laid for a public purpose. . . . It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense

and what is not. But in the case before us, in which towns are authorized to contribute aid by way of taxation to any class of manufactures, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labour. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner, are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions. No line can be drawn in favour of the manufacturer which would not open the public treasury to the importunities of two thirds of the business men of the city or town." \*

Twelve years later a similar case was decided by the same United States Court in the same way. Under the

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\* Here, then, we have from the Supreme Court of the United States a decision, as recent as October, 1874, defining the limitation of the power of taxation growing out of "the essential nature of a free government"; and if under such natural limitation there is no power, as the court decided, in a State government (irrespective of anything to the contrary in the Constitution of such State) to levy taxes for the support or encouragement of manufacturers, it is difficult to see under what rule or authority the Federal Government can levy taxes like those now imposed, which, from the circumstance that they yield year after year little or no revenue to the national Treasury, are manifestly levied and maintained for other than public purposes.

Whether, if a case involving the validity of tariff taxes like those above specified could be brought before the United States Supreme Court, it would apply the same rule of principle to the Federal that it has to a State government, in respect to the limitation of the sphere of taxation, may be regarded as an open question. An opportunity for avoiding a decision on this subject might be found in the assumption that there was no evidence before the court that any particular tariff act was passed by Congress for any other than revenue purposes, and that the court could not take cognizance of a subsequent change in circumstances growing out of changes in the conditions of prices and supply and demand. And in this connection it is curious to note that in the first tariff enactments of the Federal Congress, which embodied the principle of protection, the preambles of the act openly stated and recognised the objects aimed at, viz., "the support of the Government, and the encouragement and protection of manufactures"; while in later years the latter clause, relative to manufactures, has been shrewdly omitted from the tariff act preambles—possibly from a suspicion that there was a constitutional question covered



authority of a State law, the city of Parkersburg, Virginia, had issued bonds in aid of a private enterprise. The court decided these bonds to be void for the reasons set forth in *Loan Association vs. Topeka*. The decision was rested wholly upon the decision in the earlier case, and there was no dissent from it, although one justice (Clifford) had dissented in the *Topeka* case. Justice Blatchford, in rendering the opinion, said: "Taxation to pay the bonds in question is not taxation for a public object. It is taxation which takes the private property of one person for the private use of another person."

Particular care has also been taken by the courts to close the door against the possibility of making taxation subservient to any private purpose by incorporating it with some public purpose:

"Public aid to private purposes can not be secured by yoking them to a public purpose. And where the public and private purposes are attempted to be aided by a single concession, the latter vitiate rather than the former uphold the grant. The entire purpose—or, if there are several, and no rule of apportionment as to the application of the proceeds—then all the purposes must be public."—*Opinion of Justice Brewer, 23 Kansas, 745.*

The cases in which the above conclusions have been apparently antagonized before the courts of the United States have been numerous, and have related mainly to the right of the Legislatures of the several States to levy taxes for purposes in respect to which the paramount object—i. e., for public or private good—was not clearly evident; as for the construction of railroads, the drainage of land, the promotion of sanitary measures, the payment of bounties in aid of educational or charitable institution

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up in this matter of protective duties which some day would not be found able to stand judicial examination.

But until the contrary is proved, the opinions and judgments of the Supreme Court of the United States, as given in the *Topeka* case, would seem to admit of no other construction than that taxation for any other purpose than revenue, or taxation for protection, or in aid of private interests engaged in manufacturing, is beyond the province of the legislative power of either our national or State governments, and when imposed—to use the exact language of the court—"is none the less robbery because it is done under the forms of law and is called taxation."



whose property is owned by and whose policy is directed by private individuals, religious sects, or corporations, and not by the State, and the like.

The question whether taxation by which aid was afforded by towns or counties to the building of railroads was for a public purpose, has been especially brought to the attention of the courts, State and Federal, in repeated instances; and, although the preponderance of opinion has been in the affirmative when legislative authority has been previously granted, yet the decision of the courts has rarely been unanimous, and in some cases has been adverse. Thus, in *People vs. Township* (20 Michigan, 452), an act of the Legislature of Michigan authorizing townships to pledge their credit to aid in the construction of a railroad from the city of Detroit to a suburban village was held void in a remarkably able opinion by Justice Cooley. Again, in *Whiting vs. Sheboygan* (25 Wisconsin, 157), an act of the Legislature of Wisconsin authorizing the county of Fond du Lac to levy a tax, the proceeds of which were to be given to aid the building of a railroad from the city of Fond du Lac to the city of Ripon, was also held by the court to be void.

The argument in favour of the unconstitutionality or wrongfulness of the application of the proceeds of the taxation of the people by States or municipalities for aiding the construction of railroads has been, that they are built by corporations organized mainly for the purpose of gain; that they are under the control of such corporations rather than that of the State; and that the taxes in question went to swell the profits of individuals, and did not result in good to the State or benefit to the public except in a remote collateral way.

On the other hand, it has been urged that roads, canals, bridges, navigable streams, and all other highways, have in all times been matters of public concern; that such channels of travel and of the carrying business have always been established, improved, and regulated by the State; and that a railroad had not lost this character because constructed by individual enterprise, aggregated into a corporation.

In rendering an opinion in the celebrated *Loan Association vs. Topeka* case, the court took up the question

whether the grants of public money or credit which have been made by counties and municipalities in the United States in aid of railroad construction were not by parity of reasoning equally unconstitutional as similar grants for establishing or encouraging manufactures have been held to be; and remarked that in all such cases, which have been numerous before the courts in every State in the Union, "the decision has turned upon the question whether the taxation by which the aid was afforded to the building of railroads was for a public purpose. Those of the judges who came to the conclusion that it was, held the law for that purpose valid. Those who could not reach that conclusion held them void. And it is safe to say that no court has held debts created in aid of railroad companies, by counties or towns, valid on any other ground than that the purpose for which the tax was levied was a public use, a purpose or object which it was the right and the duty of the State governments to assist by money raised from the people by taxation." But, continues the judge, "*Of the disastrous consequences which have followed its recognition by the courts, and which were predicted when it was first established, there can be no doubt.*"

It is interesting to note in this connection that since the decision in this case many States of the Union have been forced to prohibit loans in aid of the construction of railroads and like enterprises in the revision of their Constitutions.

When the purpose of taxation is evidently to primarily promote the interests of individuals—i. e., to establish a manufactory, a brick company, a hotel, and the like—the courts whose province it is to decide whether the purpose is public or private will as a rule undoubtedly declare it void.

A noted and the almost solitary instance in which the above proposition and precedents have been clearly antagonized by a judicial decision is to be found in a case in Louisiana, where an act of the State Legislature authorizing a municipal subscription to the stock of a company incorporated to build a theatre was held valid, on the ground that "it would contribute to the wealth and embellishment of the city, afford a place of relaxation and amusement, and would tend to correct and enlighten the

morals of the citizens.”—*First Municipality vs. New Orleans Theatre Company*, 2 Rob., Louisiana, 209.

THE SUGAR BOUNTY CASE OF 1891.—A review of this department of the application of taxation would be incomplete that failed to notice a legal contention before the Supreme Court of the United States in 1891, respecting the constitutionality of the tariff act of 1890, which was questioned on several grounds; one of them being a provision requiring the payment of bounties to every producer of sugar of certain saccharine strength \* from beet, sorghum, sugar cane, or maple sap, grown or produced within the United States. Under this provision of the tariff enactment of 1890, the citizen of Connecticut was taxed for the benefit of the farmer of Nebraska or California, and the farmer of New York for the benefit of the Louisiana planter; the farmer who raised wheat and corn at ten or twelve dollars an acre was taxed for the benefit of a farmer in a distant State who raised sugar cane or sugar beets at fifty or a hundred dollars an acre. There was, moreover, but little doubt that the inclusion of sugar, made from maple sap, in the bounty provision, was not originally contemplated by the originators and promoters of the act; inasmuch as the manufacture of such sugar is one of the most profitable industries of the country, and as a rule readily calls for a fancy or artificial price; but was included in the act, while under consideration by Congress, for the reason that its enactment into law would otherwise have been difficult or impossible. Another interesting and anomalous feature of this case was that it originated in an attempt to obtain the bounty after the enactment (law) offering it was repealed, on the ground that the claimants planted cane in expectation of the continuance of the bounty, and would suffer loss if they did not get it. The question of the validity of the entire tariff act, by reason of the unconstitutionality of the bounty provision contained in it, having been raised, the attorney general of the United States antagonized such assumption before the court as follows:

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\* Two cents per pound on sugar testing not less than 90° by the polariscope, and one and three fourths cents per pound on sugar testing less than 90°, but not less than 80°.

First, that under the clause of the Federal Constitution (section 8 of Article I) which empowers Congress to levy taxes, duties, etc., "to pay the debts and provide for the general welfare" of the United States, Congress has the power to expend taxes for anything which, in its judgment, is "for the general welfare." Second, that the judicial decisions of the State courts, to the effect that taxation, to be lawful, must be for public purposes, have no application to this controversy, inasmuch as they were all of them cases of municipal taxation, which must be for public municipal purposes; and that it is obvious that the establishment of a particular industry in one place, by a bonus to specified private individuals, is a very different object for taxation than the encouragement by the national Government of a widespread industry in many quarters of the Union for national purposes, with a view of diversifying the industries of the country and making it independent of other countries for its necessities."—(*Speech of United States Attorney-General Miller.*) Third, that the assumption that "public purposes" in respect to taxation by Congress means something different than the same phrase when applied to State taxation is sustained by instances in which Congress has authorized the expenditure of public moneys for bounties or relief to people in this and other countries; some forty cases of this character being cited, in which relief in the form of money or supplies was given to sufferers by fire, grasshoppers, overflow of the Mississippi, yellow fever, earthquakes (one in Venezuela, South America), and for defraying the expense of transporting food to Ireland, France, and Germany. To these instances may perhaps be added the "codfish bounty," which was practically a drawback upon the duty on imported salt used for preserving fish.

In rejoinder it was contended: First, that if Congress has power to expend taxes for anything which in its judgment is "for the general welfare," then there is practically no limitation whatever upon its constitutional power to raise and appropriate taxes; and that its power to treat the public purse as its own and give away the proceeds of taxation is as unlimited as is the cupidity of congressional lobbyists. It was also ingeniously pointed out that the position of the attorney-general was equivalent to saying

that when a tax is levied by a State for a given purpose it is not for public use, but when levied by the national Government for the same or a like purpose it is for public use. Again, such an assumption of unlimited power on the part of Congress directly antagonizes the opinions of Chief-Justice Marshall (see page 230) and also the declaration, made in special reference to the taxing power, by the United States Supreme Court through Mr. Justice Miller in the Topeka case (page 232), "*That the theory of our governments, State and national, is opposed to the deposit of unlimited power anywhere.*" Justice Story (on the Constitution, section 990) also asks and answers the precise question at issue: "Has Congress a right to raise and appropriate the public money to any and to every purpose according to their will and pleasure? *They certainly have not.*" The same jurist, in his lectures on the Constitution, thus further amplified his ideas on this subject, and evidently thought that he had in the following brief paragraphs brought the argument in support of the "unlimited" theory to a *reductio ad absurdum*.

"A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power." It is "a power exclusively given to raise revenue, and it can constitutionally be applied to no other purpose. The application for other purposes is an abuse of the power; and in fact, however it may be in form disguised, is a premeditated usurpation of authority." A grant under the Constitution to Congress "to do any act they pleased which ought to be for the good of the Union . . . would reduce the whole instrument to a single phase, that of instituting a Congress with power to do whatever would be for the good of the United States; and as they would be the sole judges of good or evil, it would also be a power to do whatever evil they pleased" (1 Story, Constitution, section 926).

Second, to the assumption that the decisions of the State courts in respect to the limitations of the power of taxation do not apply to this controversy, it was replied that the relation of the State courts to their State Constitutions is substantially the same as that existing between the Federal Supreme Court and Congress; that the State decisions (which have not been, as was claimed, "all cases

of municipal taxation") frequently treat such legislation, independently of Constitutions, as being in violation of natural right, and that there are limitations imposed upon legislative power by reason of "general principles" has been recognised by the United States Supreme Court (*Bartemeyer vs. Iowa*, 12 Wallace). It would further seem that natural rights must be the same, whether against legislation by Congress or by the Legislature of a State. If a State can not levy and expend taxes for other than public purposes, it may be presumed, *a fortiori*, that the national Government can not, "for the former can do *anything* which the Constitution (and natural right) do not forbid; while the latter can do nothing which the Constitution does not first sanction." The Federal Government has "no right to raise money by taxation for a thousand things for which the State may impose taxes and collect them of the people."—*Miller, Justice, Lectures on the Constitution*.

Third, in respect to the instances cited, in which Congress has expended moneys for bounties, or relief of private interests, in this and other countries, it was replied that they were all matters of national charity; were never subjected to judicial scrutiny, or even seriously challenged in debate; were never for large amounts, and did not contemplate any special levy of taxes, but were from funds already in the Treasury. It was also claimed that this was the first case in which the constitutionality of a congressional bounty, whether direct or indirect, for "protection," has ever been before the United States Supreme Court for discussion. And pertinent to the case it should be further noted, that when it was proposed in the Convention that framed the Federal Constitution to incorporate in it a provision for bestowing "rewards" for "the promotion of agriculture," the proposition was rejected.

The facts about the bounty for codfisheries are, that it was given under the first revenue laws (levying duties) of the United States in 1792, and was intended to offset bounties and other measures adopted by England, as was believed, for the purpose of destroying the fisheries, not only of the United States, but also of France. Its enactment was strenuously resisted at the time, on constitutional grounds, and especially by as good a constitutional

authority as Madison, who held that the enactment of a bounty was beyond the power of Congress (4 Elliot's Debates, Philadelphia edition, 1875, 525, 526). Its legality was never judicially examined, and the act expired by its own limitation in seven years. Subsequent acts expressing limitation were passed of the same character from time to time; and since their final expiration, many years ago, it is claimed that no Congress, until the Fifty-ninth, 1890, has asserted its right to levy taxation embodying the bounty principle.

The court, in giving an opinion affirming the constitutionality of the tariff act of 1890, evaded the question of the constitutionality of its bounty provision, on the ground that the invalidity of one part of a revenue act does not invalidate the whole act; and when that principle was settled, the objections to the act based on separate clauses really disappeared.\*

The disbursement of the money voted by Congress for the payment of the sugar bounties having been withheld by the Comptroller of the United States Treasury on the ground that the appropriation was unconstitutional, the court held that if Congress made promises and thereby induced people to incur expenses which they would not otherwise have incurred, and has then appropriated the money to indemnify the parties, the payment can not be stopped by an administrative officer on the ground of the unconstitutionality of the primary bounty enactment.

A question of interest in connection with this case, which may naturally suggest itself, especially to those not learned in the law, is, How happens it that repeated acts of expenditure of money raised by taxation for admittedly private purposes have been authorized by Congress, without any challenge before the proper courts of their constitutionality? The answer is to be found in the legal fact that "the question of the constitutionality of a law can never be presented and determined abstractly. It must always be raised by somebody whose person or property is affected by the execution of the statute the validity of

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\* One of the best reviews of this celebrated case, one to which the writer has been greatly indebted, is to be found in an article contributed to and published in the Harvard Law Review for February, 1892, by Charles B. Chamberlain, Esq., of Boston.



which he impugns. Until the opportunity for raising and the individual who can raise the question of constitutionality present themselves, there can be no presumption from the existence of such legislation upon the statute-book."

In Maine, a law which for more than half a century—almost as long as the State has existed—had been enforced, and reproduced in each revision of the statutes, was declared unconstitutional so soon as challenged; the chief justice meeting the reason for such acquiescence by saying that "the judicial opinion and the public sense were not so much awakened to the principle underlying this then as now." (Brief of Smith and Clarke, averring the unconstitutionality of the tariff act of 1890.)\*

The nature, definition, and limitations of the service for public purposes, which a free representative government can render or perform by the expenditure of moneys raised by taxation having been once ascertained and enunciated by the supreme judicial authority of the State (as would seem to have been done in the United States), the instant, thereafter, that taxation essays to become anything but taxation—i. e., for an unquestionable public purpose; the instant that it is made an instrumentality for effecting any results other than such as are directly necessary or beneficial to the whole public, that instant it becomes inequitable and antagonistic to the very idea of a just government; and the citizen whose person or property is thereby affected has at least a moral right to demand protection and redress.

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\* "It is by facts and instances that the people are taught their Constitutions and their laws. Constitutions are framed; laws established; institutions built up; the processes of society go on, until at length, by some opposing, some competing, some contending forces of the State, an individual is brought into the point of collision, and the clouds surcharged with the great force of the public welfare burst over his head."—*Speech of Mr. Evarts for the Defence, in the Impeachment of President Johnson.*



## CHAPTER XIV.

### RULES OR MAXIMS ESSENTIAL TO AN ADMINISTRATION OF RIGHTFUL TAXATION UNDER A CONSTITUTIONAL OR FREE GOVERNMENT.

#### PART II.

IN continuance of the discussion entered upon in the preceding chapter, as to whether under a constitutional and free government, and in virtue also of the natural and inalienable rights of the people governed, a state has a lawful right to levy and expend taxes in furtherance of private interests, more especially by way of bounties, the following additional points may be worthy of consideration:

Probably no better exposition of the limitation on the exercise of the taxing power incumbent on a free government professing a regard for the rights of the people, and more especially on the Federal Government of the United States, under its Constitution, in respect to the granting of payment of bounties for the promotion of the private interests of any of its citizens, can be found than the following, accredited to Justice Thomas M. Cooley:

“It is not in the power of the state, in my opinion, under the name of a bounty, or under any other cover or subterfuge, to furnish the capital to set private parties up in any kind of business, or to subsidize their business after they have entered upon it. A bounty law of which this is the real nature, is void, whatever may be the pretence on which it may be enacted. The right to hold out pecuniary inducements to the faithful performance of public duty in dangerous or responsible positions stands upon a different footing altogether; nor have I any occasion to question the right to pay rewards for the destruction of wild beasts and other public pests, a provision of

this character being a mere police regulation. But the discrimination by the state between different classes of occupations, and the favouring of one at the expense of the rest, whether that one be farming or banking, merchandising or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in state government. When the door is once open to it there is no line at which we can stop and say with confidence that thus far we may go with safety and propriety, but no further.

“Every honest employment is honourable; it is beneficial to the public; it deserves encouragement. The more successful we can make it the more does it generally subserve the public good. But it is not the business of the state to make discriminations in favour of one class against another or in favour of one employment against another. The state can have no favourites. Its business is to protect the industry of all, and give all the benefits of equal laws. It can not compel an unwilling minority to submit to taxation in order that it may keep upon its feet any business that can not stand alone.”

A brief historical retrospect is here pertinent to this subject. The payment of bounties from the proceeds of taxation, or rather of exaction, is a relic of the commercial methods of the middle ages. They were, however, regarded as legitimate fiscal expedients for the encouragement of trade and domestic industries during the whole of the last (eighteenth) century; but since then, under the influence of a higher civilization and modern economic ideas, have been almost entirely discarded from the fiscal systems of the leading commercial nations until within a comparatively recent period, when they have been revived and made mainly applicable to the production and sale of a single one of the world's great commodities—namely, sugar;\* and the history of this experience constitutes a most interesting and instructive chapter in economic history.

Although the practice of stimulating the production of

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\* The policy of payment of bounties for the encouragement of shipping and of shipbuilding enterprise has also, to a limited extent, been established, more especially by the three Governments of Germany, France, and Italy.

beet-root sugar in Europe through high protective duties on imports and export bounties, direct or indirect, dates back to the first quarter of the century, the present complicated and curious state of affairs is really due to a method of taxing beet sugar by Germany which was adopted in 1869. The idea involved in this method was, in brief, to collect an excise or internal-revenue tax on all sugar produced, and by allowing a drawback on what was exported, give a bounty on so much as was sold to the people of other countries. The other states of continental Europe, finding the markets of their own product of beet-root sugar everywhere supplanted by the German sugars, and their domestic manufacturers being thereby brought to the verge of ruin, made haste to follow the example of Germany, until the policy of Germany, France, Belgium, Holland, Austria, and Russia seems to have been to stimulate their domestic product of sugar to the greatest extent, and then enter into competition with each other to see which of them could sell cheapest to foreigners at the expense of their own people. The general result is, that the great beet-sugar industry of Europe has been established and is now conducted on what may be regarded as an artificial basis, and one not inaptly characterized as a most ingenious method for entailing money losses on the mass of the people of the countries above mentioned.

The immediate sequence of this policy has been an enormous increase in the beet-sugar product on the Continent of Europe—i. e., from 2,223,000 tons in 1885-'86 to nearly 5,000,000 (4,789,000) tons in 1895-'96—with such a reduction in price that the whole sugar industry of Europe is seriously depressed, with a general complaint on the part of producers that the amount received by them does not cover the cost of production. Under such a condition of affairs, the German Parliament (Reichstag), in May, 1896, accepting a popular declaration that "sugar was the last and only agricultural product in which there remained any profit for the German farmer, and that whatever skilful legislation could do to preserve and protect that industry should in justice to the suffering landowners be given a prompt and thorough trial," passed an act increasing the bounty on the export of sugars to an extent assumed to be sufficient "to enable German exporters to

compete against all comers in foreign markets"; advancing the import duty on sugars to a prohibitory degree; and fixing an internal-revenue tax on sugars to such an extent as to yield a net income to the state in excess of its disbursements on account of bounties on exports. The effects of the new statute have now become apparent and ominous. The foreign sugar market has responded to the increased bounty export by a proportionate decline in price; and a movement soon found favour to petition the Reichstag to make certain amendments in the existing statute so as to restrict instead of stimulating production, and to invite international negotiations for the gradual abolition of all export bounties, which have been proved to be simply a burden on the treasury, which pays them for the benefit of non-producing foreign countries.

The present burden which the sugar-bounty system entails upon the taxpayers of Europe is estimated at about \$25,000,000 per annum, while the excise tax on sugar in Germany, France, and Austria is said to amount to \$100,000,000 per annum. On the sugar consumed by the people of the continental nations of Europe which have adopted the bounty policy there is no bounty, but on the contrary an excise tax; the result of which legislation is to make exported sugars very cheap and home consumption abnormally dear. This is demonstrated by reference to the statistics of the comparative consumption of different countries. Thus in England, whose policy since 1874 has been to give her people sugar free of taxation, the per capita consumption has risen from fifty-six pounds in that year to eighty-six pounds in 1896; while the saving to the British people from the reduction of the cost of this one item of their living has been estimated to be at least £6,000,000 (\$30,000,000) per annum. The great reduction in the price of sugar has also given a remarkable impetus to the British industry of manufacturing sweets, in the form of confectionery, preserves, jams, marmalades, etc., which last to a considerable extent have undoubtedly supplanted the use of butter. The present annual average consumption of sugar in Germany is reported to be about twenty-seven pounds per capita. In France the declining consumption of sugar has been made the subject of recent debate in the Chamber of Deputies, where the question was pertinently

asked by one of the deputies (M. Méry) if the object of the existing governmental policy in respect to sugar "was mainly to produce it or to have and enjoy it." The Agricultural Society of France has also recently unanimously indorsed a demand of the French sugar makers and refiners that the Government should increase the present bounty on the export of sugar to an extent equivalent to the combined or aggregate bounties allowed in Austria and Germany.

So much, then, for nearly half a century's experience on the part of the leading continental nations of Europe in attempting to regulate the production, price, and consumption of sugar through a system of bounties.\*

Practical experience in respect to the employment of bounties also leads to a deduction, which may be almost regarded in the nature of a principle, that when bounties are employed for the promotion of some public good, the object sought eventually becomes subordinate to the opportunity which an unnatural and unprincipled perversion of the bounty provisions affords for the promotion of private rather than public interests. The following illustrations, though somewhat comical in their nature, serve to sustain this proposition:

In the early years of the present century the State of Connecticut, having in view the promotion of its agricultural interests, offered a premium on the destruction of the crow; to be paid on the production of the head of the bird to the proper authorities. Thereupon the sons of the farmers, desirous of earning a little money, then much more difficult to obtain than at present, diligently searched the woods for the nests of crows, from which at the proper time the eggs were transferred to sitting hens, by whom they were hatched and the resulting offspring brought up until their heads became available for presentation and procurement of the bounty. A summary of the general results of such experience would be somewhat as follows: First, a perversion of the legitimate industry of the hen; second, an elementary lesson for young persons in perpetrating frauds against the State; third, an impairment of the agency of a bird, whose habits have been

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\* See my *Recent Economic Changes*, p. 296.

proved by subsequent scientific investigations to be beneficial rather than detrimental to the interests of the farmers. Again, in the early history of one of the Northwestern States of the Federal Union a bounty was offered, at the request of the farmers, for the heads of little burrowing animals known as "gophers," which attracted little attention till the experience of several years showed that the disbursements of the State on this account had become abnormal and were rapidly increasing. Investigation then proved that the raising of gophers by citizens of the State for the procurement of bounties had become a regular industry. A like experience in British India is also worthy of note. Some years since the Government, with a view of arresting the mortality among its native population from the bites of poisonous serpents, offered a bounty on their proved destruction; when it was found that for the sake of obtaining the bounties the cultivation of the "cobra" and other like snakes had been actually entered upon.

Third. *The sphere of taxation should be limited to persons, property, and business exclusively within the territorial jurisdiction of the taxing power.* It would seem to be in the nature of a self-evident proposition, although in fact it is by no means so regarded, that the power of every state or government to tax must be exclusively limited to subjects within its territory and legal jurisdiction. "*All subjects,*" says Chief-Justice Marshall, in giving the opinion of the Supreme Court in the case of *McCulloch vs. Maryland* (4 Wheaton, 431), "*over which the sovereign power of the state extends are objects of taxation; but those over which it does not extend are, on the soundest principles, exempt from taxation.*" And again: "The sovereign power of the state extends to everything *which exists by its own authority or is introduced by its permission.*" "Every nation," says Wheaton, "possesses and exercises exclusive sovereignty and jurisdiction throughout the full extent of its territory. It follows, from this principle, that the laws of every state control, of right, all the real and personal property within its territory. The second general principle is, that no state can, by its laws, directly affect, bind, or regulate property beyond its own territory. This is a consequence of the first general principle; a different system, which would recognise in each state the power of

regulating persons or things beyond its territory, would exclude the equality of rights among different states, and the exclusive sovereignty which belongs to each of them." (Wheaton's International Law, chap. ii, § 2; Foelix, *Traité du Droit International Privé*, §§ 9 and 10.) And in a decision of more recent date (State Tax on Foreign-held Bonds, 15 Wallace, 306, 328), the United States Supreme Court said: "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects *within the jurisdiction of the state. Property lying beyond the jurisdiction of the state is not a subject upon which her taxing power can be legitimately exercised.* Indeed, it would seem that no adjudication should be necessary to establish so obvious a proposition."

The principle under consideration has also been made the subject of adjudication by the United States Supreme Court in a case of historic as well as of legal and economic interest. In September, 1814, the country being then at war with Great Britain, the town of Castine, in Maine, was captured by the British forces, and remained in their exclusive possession until after the ratification of peace in 1815. During this period the British Government exercised all civil and military authority over the place, established a custom house and allowed merchandise to be imported, some of which remained in Castine after it was evacuated by the enemy. On the re-establishment of the authority of the United States, the American collector of customs for the district, claiming a right on the part of the United States to Federal duties on the goods in question, demanded payment of the same from the owners or importers; and, the claim being resisted, the case went up to the United States Supreme Court, which with complete unanimity gave judgment, through Justice Story, for the owners or importers in the following language:

"We are all of the opinion that the claim for duties can not be sustained. By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States was suspended, and its laws could no longer be enforced there, or be obligatory on the inhabitants who remained there and submitted to the conquerors. By the



surrender the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws and such only as it chose to impose. From the nature of the case, no other laws could be obligatory on them; *for where there is no protection or allegiance, or sovereignty, there can be no claim to obedience.*"

Taxes, therefore, are necessarily the creation of each state, and no self-respecting Government ever permits any other Government to interfere with its tax laws or their execution, and a toleration of such interference in any degree presupposes dependence, subjection, or absence of independence. An obvious co-relation of this proposition, and also a matter of fact, is that a violation of the tax or revenue laws of one country has never been regarded as an offence or crime in any other country; and the English courts have held that contracts to evade the customs laws of a foreign country are not illegal. Hence, also, offenders in this respect are never taken into account in extradition treaties between different nations and their governments. Some years ago a United States district attorney in New York procured through the Department of State at Washington the extradition of a person from England on the charge of forgery. On his arraignment before a United States court it transpired that the offence committed was the manufacture and use of fraudulent invoices, to which forged or fictitious names had been attached, for the purpose of evading the payment of United States customs or taxes on certain imports; and that the intent of the prosecution was punishment, not for forgery in the ordinary sense of the term, but for smuggling, for which latter offence there was no precedent that extradition had ever been granted by any country. The attention of the British Government having been called to the case, a request was preferred by it to the authorities in Washington that the trial of the accused should be discontinued, on the ground that a fugitive from justice, when surrendered by a country in which he had sought refuge, should not be tried for any offence other than the one specified in the extradition demand, and for which extradition was granted. Compliance with the request being refused, although as a matter of fact the trial was discontinued, the British Government took occasion, when extradition was



next demanded of her by the United States—which happened to be the case of a former well-known citizen of Boston who had committed forgery in the sense that constitutes a crime in all countries—to refuse it, although the offender had in the first instance been arrested in England and was in custody; and for many years subsequent and for reasons above given there was no extradition in force between the United States and Great Britain and her colonies, with the result of making Canada an *Alsatia*, or place of safe refuge, for all criminals of the former country.\*

All, therefore, that any government can legitimately ask of another government in respect to taxation is, that its subjects or citizens residing in such foreign state shall not be there discriminated against because they are foreigners; but shall be treated in exactly the same manner as the subjects or citizens of the taxing power and their property are treated—no better and no worse. If foreigners feel aggrieved, they must first exhaust all the remedies against unjust taxation provided by the institutions of the taxing country; as foreign importers, for example, aggrieved by rulings or appraisements at the custom houses of any country, must first appeal for redress to the courts of such country. A recent event of great economic and legal importance is also worthy of narration and consideration in this connection.

A board of appraisers and assessors charged with the duty of assessing, for the purpose of taxation, the property in Ohio of telegraph, telephone, and express companies, discharged the duties incumbent upon it—taking an express company for example—in the following manner: *First*, by determining the value and liability to taxation of the real estate of the company situated in Ohio; *second*, the personal property, including moneys and credits, owned by the company in Ohio, and the value thereof; *third*, the gross receipts during the taxing year of the company in Ohio, from whatever sources derived. It was conceded that the returns made by the company to the above officials were correct, and that the aggregate value of the

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\* These cases of Lawrence and Winslow are fully treated in Wharton's Digest of International Law, § 270.

items included in such returns liable to taxation in 1895—the same as other like property in the State—was \$42,065. The board of appraisers and assessors added, however, to this amount the sum of \$491,030, making the aggregate of the tax liability of the express company \$533,095; and based their action not on any belief or pretence that any considerable amount of real or personal property within the territorial jurisdiction of the State had been discovered which had hitherto escaped taxation, but that sources of reported value which were entirely outside of the territory and beyond the jurisdiction of the State of Ohio—when they constituted a part of the value of the capital or franchise of a corporation located and established in some other State for the purpose of carrying on business, and that business “interstate commerce” entirely within the control of the Federal Government—might be added to the intrinsic value of property within the State; thereby assessing not only property *within* the State of Ohio, but a proportion also of all property situated *without* its territorial boundaries. The question involved was therefore the constitutionality of extra-territorial taxation; and the case, after consideration by State and United States Circuit Courts, was finally brought before the United States Supreme Court. Here, notwithstanding the citation of numerous former opinions and judgments of the court wholly adverse to the constitutionality of the principle on which was based the assumption and action of the State of Ohio, the court by a majority of one held to a contrary view; and gave judgment in support of the State assessments on the express company.\* It is clear, therefore, that the State of Ohio has been justified, for the time being, in an attempt to tax something that it calls property, but which is neither tangible nor visible; that has no intrinsic or essentially inherent value; and which procedure, if generally accepted and put in practice by other States, would antagonize all formerly accepted theories and legal decisions in respect to extra-territorial taxation, and ultimately destroy all interstate commerce between the several States of the Federal Union.

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\* See the decision of the court in *Adams Express Company vs. Ohio State Auditor*, 165 U. S., 194.

AN IMPLIED BUT FUNDAMENTAL RECIPROCAL OF TAXATION.—Notwithstanding the absence of any warrant for assuming that there was ever any real or implied contract, whereby a State in its beginning or development agreed to give a certain amount of protection to life and property in return for an equivalent in money, goods, or services of its citizens—an assumption which has been characterized as the “commercial theory of taxation” \*—it is nevertheless true that the “co-relative” or “reciprocal” of taxation is protection; or, in other words, according to the political theory of our governments, national and State, and in fact of every government claiming the title to be *free*, taxes may be legitimately assumed to be the compensation which persons and property pay the State for protection. This assumption, it is believed, has been indorsed and accepted by every writer of repute on economic subjects who has discussed taxation from the time of Montesquieu down to a very recent period; † and in the

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\* “The right of a State to take the citizen’s property must be put on higher ground if it is to stand on perfectly safe ground. Of course, such higher ground is not to be found in the pretence that the right in question is the simple right of might; that the ruling power, whether monarch or majority, is physically able to take and apply as it chooses all that the individuals ruled over called their own; and that because it can, it morally may, take whatever part it thinks fit. With simple ethics the leviers of taxes, whenever they are a distinct class, are wont to content themselves. But whatever countenance they have received from such moral philosophers as venerate successful force, the principle will hardly serve those who study the matter as taxpayers.”—*Theodore Bacon*.

† “The philosophy of our plan of voluntary political association is, that all individuals, and all the values within a community, shall aggregate into one mass all the power which they separately contain, which sum total shall constitute a sovereignty of the whole. This sovereignty—the soul of the State, which can not be impaired and the State survive—reflects back upon its constituents, in detail, all that it has received from them. What it receives, and what it returns, is of two kinds, as to both source and object, viz., individual service to the Government, and protection to the individual *from* it. Thus, in his individual capacity, a man is bound to perform military service, and the State, by the military arm, is bound to protect him from invasion. He is bound to do jury duty, and the authorities are bound, upon his demand, to provide him a jury. He is bound to aid the sheriff, and the sheriff is bound to execute process in his favour by *posse comitatus*,

repeated instances in which this matter has come before the courts for adjudication, the highest judicial authorities have uniformly given judgment or expressed opinions to the same effect. In confirmation of these statements the following citations are submitted:

Montesquieu, writing with the monarchical institutions of France mainly or solely in view, discusses this subject in his *Spirit of Laws* (book xxxi, chap. i), as follows: "The public revenues are a portion that each subject gives of his property, *in order to secure or enjoy the remainder.*"

"The right to tax an individual results from the general protection afforded to himself and his property."—*Vattel, Law of Nations, book i, chap. xx.*

"Property and law (i. e., government or the state) are born together and die together. Before laws were made, there was no property; take away laws, and property ceases."—*Bentham, Theory of Legislation.*

"Where there is no protection," said Judge Story (in the case of the *United States vs. Rice*, 4 Wheaton, 276), "there can be no claim to allegiance or obedience." Again the same eminent authority (in the case of *Miles vs. Duryea*, Cranch, 481) thus strongly expresses himself: "It is an eternal principle of justice that jurisdiction can not be justly exercised by a State over property that is not within reach of its process—that is, property which it can not protect."

"*Taxes are a portion which each individual gives of his property, in order to secure and have the perfect enjoyment of the remainder.* Governments are established for the protection of persons and property within the limits of the State, *and taxes are levied to enable the government to afford and give such protection.* They are the price and

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if necessary. These personal services correspond to those which in feudal times the mesne lord, holding a frank tenement, owed the lord paramount. They can not be compounded for, for their value consists in their being rendered in kind. *Their performance is the only price which the citizen pays for his citizenship.* The terms are not only consistent and harmonious with our general scheme of government, but are highly politic. To all political privileges we admit each one by virtue of his being a man, free born, and of lawful age; we ask him nothing concerning his property, unless his property asks something from us."—*Lowrey, Argument, New York Assembly, 1862.*

consideration of the protection afforded." (Ingersol, J., Circuit Court of the United States, *Duer vs. Small*.)

"There is nothing poetic about tax laws. *When they find property, they claim a contribution for its protection.*" (Lowrie, Chief Justice, *Tinley vs. The City, etc.*, 32 Penn., 381.)

The principle here involved is also clearly and succinctly further expressed in the following citations:

"'Taxation' is, in any view, taking private property for public use, and it can not be so taken without an equivalent, both as to the Government or the citizens. It is not competent to convert private property to public use by way of taxation, and without compensation, any more than by any other mode.

"Taxation (if anything in the nature of principle is assumed as its basis) therefore implies that the government imposing it will return an equivalent. But to return an equivalent in the form that was taken, namely, money, would be stultification. The only equivalent that a government can return, and the only one, in truth, that justifies taxation, is in the nature of a guarantee that the person, property, or business on which the tax is imposed shall have all the rights which the civilization of the State represents, or, in other words, 'protection.'"—*Redfield*.

"'If it were practicable to do so,' says Justice Cooley, 'the taxes levied by any government ought to be apportioned among the people according to the benefit which each receives from the protection the government affords him. This is upon the assumption, never wholly true in point of fact, but sufficiently near the truth for the practical operations of government, that the benefit received from the government is in proportion to the property held or the revenues enjoyed under its protection.'"—*Cooley, on Taxation, pp. 14-17.*

Notwithstanding this preponderance of opinion, argument, and legal decisions in favour of the correlation of taxation and protection, the truth of this assumption has been called in question in recent years, and even wholly denied by some economic and legal authorities. Thus, in most of the States of the Federal Union (but not in other countries), sovereignty in respect to taxation is assumed, or enacted to embrace "goods, chattels, money, and effects,

*wherever they are*; ships, public stocks and securities, stocks in turnpikes, bridges, and moneyed corporations, *within or without the State*"; and where the administrators of the law tax *residents* for personal property, even of a visible, tangible character, having a *situs* in another State or country; and, by another irreconcilable rule, tax *non-residents* for all of their personal property having a *situs* within the State.—*Massachusetts Statutes*.

Such antagonism would seem to be wholly due to an inadequate comprehension of the subject. It is assumed, for example, that there can be no necessary reciprocity of the nature indicated between the State and the subjects of taxation, because, in the case of subjects—persons, property, and business—upon which no tax is levied, there can be no correlation, and therefore no claim whatever for protection; and in illustration and support of this proposition it is pointed out that churches and other public institutions, specifically exempt from taxation, need and receive as much protection from the State as structures used for dwellings and stores, and that tramps, who have nothing to pay with, are equally entitled to invoke and use the power of the State for protection as those who are taxed for millions. "So also the business that is not taxed at all, it is said, can no more be plundered with impunity than that which is taxed the heaviest." \* The error in all this reasoning is fundamental, and arises from a failure to comprehend that in every civilized state every person or thing is taxed, either directly or indirectly, by the diffusion of taxes, and that it is not possible to name anything in such a State that is exempt from taxation; that the primary purpose for which the State exists is to afford protection to persons and property; that it—the State—practically ceases to exist when it is unwilling or unable to afford such protection; and that, even if willing, it could not protect, except through the ability that comes to it in the possession of the power and the exercise of taxation.

Fourth. *Taxes should be reasonable, regular, and not arbitrary as respects method, time, and place of assessment and payment, and, above all, proportional.*

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\* The claim or argument in defence of extra-territorial taxation will be more fully considered hereafter.

The justice and the necessity of these conditions as essentials of a true system of taxation ought to command universal assent without argument. Adam Smith held to the opinion, "founded," as he says, "on the experience of all nations, that the certainty of what each individual ought to pay is, in taxation, of so great importance that a very considerable degree of inequality is not near so great an evil as a small degree of uncertainty." The evil of uncertainty does not, however, often characterize the tax systems of the United States, except in the case of taxation by the Federal Government of imports, when rates (customs) are sometimes held for considerable periods in abeyance by reason of political antagonisms of legislators. One of the most remarkable examples of this occurred during the months from December, 1893, to August, 1894, when the uncertainty as to the prospective rates on imported merchandise occasioned great stagnation of business in the United States, with inevitable great contingent losses. Another even more striking illustration of the evils of uncertainty in taxation is to be found in the recent (1897) proposition to subject merchandise, imported in strict conformity with established laws and rates at the time of importation, to the retroactive incidence of increased taxes, not certain but prospective in respect to rates, and not enacted or embodied in the form of statute laws. Such action is in the nature of an arbitrary fine or penalty, and not taxation, and probably does not find a parallel in the history of any civilized nation, and would not now be tolerated in any of the most despotic governments of Europe.\*

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\* A somewhat similar subterfuge was resorted to under the Tariff Act of July 24, 1897. The bill passed both Houses of Congress, and, going to the President, received his signature at six minutes past four of the afternoon of July 24th. The Treasury set up the claim that the new act became operative from the earliest moment of the day on which it received the signature of the President—namely, at twelve o'clock midnight of July 23, 1897. This claim was based upon a general rule of law which does not permit fractions of a day to be considered. The wording of the act was in unmistakable terms, and the phrase "on and after the passage of this act," or "on and after the day when this act shall go into effect," left no doubt as to the meaning of the measure. An early case, decided in February, 1815 (*Arnold vs. United States*), involved a question of import duties arising



The term *proportional*, which is largely used in constitutional provisions and in statutes relating to taxation, has, however, a meaning so much broader and of such greater significance than is generally attributed to it by law-makers and even law interpreters, that it is worth while to institute an inquiry and endeavour to understand clearly what it does mean. Scientifically considered, it means *the making of the burden of taxation equal upon all subjects of immediate competition*. This principle is one of the prime essentials of taxation, and when it is violated the act of taking, or the enforced contribution, is not entitled to be considered taxation, but becomes at once

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under a tariff act approved July 1, 1812, the importation being made on the same day. The act imposed an additional duty of one hundred per cent on all merchandise "which shall, from and after the passing of this act, be imported into the United States from any foreign port or place." The court ruled, through Justice Story, that "the statute was to take effect from its passage; and it is a general rule that, when the computation is to be made from an act done, the day on which the act is done is to be included." No question was raised, however, as to the precise hour the act was signed by the President or when the cargo arrived. In a much later case (*Louisville vs. Savings Bank*, 104 United States, 469, 475) Justice Harlan, after reviewing former decisions, admitted that there were established exceptions to the general rules, and "it can not be doubted that the court may, when substantial justice requires it, ascertain the precise hour when a statute took effect by the approval of the Executive." As one of the latest decisions of the highest court this one is important, and, quoting from an Illinois case (*Grosvenor vs. Magill*, 37 Ill., 239), the court said:

"It is true that for many purposes the law knows no divisions of a day; but whenever it becomes important to the ends of justice, or in order to decide upon conflicting interests, the law will look into fractions of a day as readily as into the fractions of any other unit of time (2 Blackstone Com., 140, notes). The rule is purely one of convenience, which must give way whenever the rights of parties require it. There is no indivisible unity about a day which forbids us, in legal proceedings, to consider its component hours, any more than about a month, which restrains us from regarding its constituent days. The law is not made of such unreasonable and arbitrary rules."

That such a ruling is consistent with sound reason and public policy has the support of the leading authorities in legal writing. "Common sense and common justice equally sustain the proposition of allowing fractions of a day whenever it will promote the purposes of substantial justice. The time of the approval of an act is a question of fact. The Constitution declares that to be



an arbitrary spoliation or confiscation. Thus, to illustrate: Suppose it were proposed to tax the stock in trade of red-haired men five per cent, and those of red-nosed men ten per cent; or, as was provided in the income-tax law enacted by the Congress of the United States of 1894, which exempted incomes below four thousand dollars per annum from taxation and taxed all above that sum two per cent; or to do as actually once was done in England, under an income-tax law enacted in 1691, tax Catholics at rates double those imposed on Protestants; it seems clear that such transactions could not involve any principle or be regarded in any other light than the mere arbitrary and despotic exercise of power; or the making of the possession of a red nose or red hair, or the result of enterprise, skill, economy, or the fortuitous circumstance of birth or belief, the occasion for inflicting a penalty. Yet this was what substantially was done in the middle ages, when nobles were exempt from taxation because they were nobles, and the common people were taxed because they were villeins or bondmen; when Jews were assessed because they were not Christians, and Catholics because they were not Protestants.

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the time when the law takes effect. This act of approval can not look backward, and by relation or fiction make that a law at any antecedent period of the same day which was not so before the approval. The Constitution can not be abrogated by construction. The law prescribes a rule for the future, not for the past. And this in a republican government is a doctrine of vital importance to the security and protection of the citizen."—*Potter's Dicarris on Statutes*, p. 101.

In an elaborate opinion the general appraisers concluded that the act of 1897 did not become operative until it had received the signature of the President, but this conclusion was so distasteful to the Government that the decision was "withheld for review." Upon being carried into the courts, the decisions were all against the Government, which reluctantly abandoned its absurd and unjust pretensions. Having before it the procedure of certain European countries, where power is conferred on the executive to raise or lower duties by decree, and to make a decree operative at once, it thought to introduce the same procedure in the conduct of the United States Treasury in tariff matters. In the light of this attempt, and of the onerous, inquisitorial, and despicable rules laid down as to the inspection of baggage of American citizens returning from abroad, it may be doubted if the customs policy of the country has ever been influenced so directly in favour of private greed and petty finance.

It would seem to be clear, therefore, that a tax that is not levied proportionally or, what is the same thing, equally and uniformly upon all subjects *in the same field of competition*—as, for example, upon all persons engaged in the same business or profession, or upon all property of the same kind and all profit or income (less exemptions in the nature of charities) in the same ratio—is a discriminating exaction, without claim to either justice or equality, inasmuch as to the same extent that some are favoured by the discrimination others are inevitably plundered or crushed. It is also well to remember that when the term “uniformity” in respect to taxation is used, as it often is, in the place of “proportionality,” the meaning is essentially the same; and that uniformity of taxation does not consist in the payment of the same amount by each taxpayer, but that the proportion of the value of each particular class or subject which each person pays in taxation to the State shall be everywhere the same.

In the soundings which have been made at great depths in the ocean for telegraphic or other purposes, the sounding line has not infrequently brought up from the bottom small chambered shells or other minute animals of exquisite organization and structure; and the question naturally arises, How can these minute organisms live and flourish under the enormous pressure that in some instances must be exerted upon them of at least three tons to the square inch? The explanation is to be found in the circumstance that the pressure is everywhere equalized, being as much from within outward as from without inward, and thus an equilibrium is maintained, under which development goes on and existence is made possible; and it is the preserving this equilibrium, this equalization of pressure, that constitutes the very essence of correct taxation.\*

Another point worthy of attention in connection with this subject is, that forms of taxation which were not authorized with any purpose of making them unequal in their incidence or burden, not infrequently (as is especially the case in the United States) become so by reason of ex-

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\* Speech of Mr. Lowe, afterward Lord Sherbrooke, Chancellor of the British Exchequer.

traneous circumstance; inasmuch as every tax which popular sentiment, year after year, will not allow to be equally enforced, is, to the extent that it is enforced, a discriminating tax of the most unjust and unequal character. Under the internal revenue laws of the United States as they existed not many years ago, there was a very striking example of this character in the case of the tax on matches, to which more particular reference will be made hereafter, and one worthy of notice still exists, in the case of the tax on negotiable securities (or instruments)—as railroad and other corporate bonds—which the laws of every State in the Federal Union make subject to taxation; inasmuch as it is notorious that such taxes are not paid by the great majority of the citizens who own such securities, but are paid as a rule by guardians, trustees, and executors, who are obliged to inventory them in probate offices; with the result that widows, orphans, and minors are plundered and crushed; while those who evade the tax, through the utter inability of the State to collect it, are rewarded for their evasion in an increased rate of interest. Uniformity or proportionality in taxation is, therefore, one of the fundamental principles of every free and just government; and the safety of all taxpayers against the grossest abuses demands that in taxing any class or locality the principle of equality of rate should be kept sacred and inviolate.

The Constitution of the United States requires that “all duties, imposts, and excises shall be uniform throughout the United States”; and the question as to what constitutes uniformity of taxation under this provision has repeatedly come before the courts—Federal and State—for the purpose of definition, and so has become invested with a degree of historical interest. A natural inference, at first thought, would be, that under this provision of the Federal Constitution all property subject to taxation must necessarily be taxed at the same rate or ratio—that is, if horses, wagons, and land are taxed, then the same per cent of value must be assessed upon the horses and wagons as upon the land; and if some eight hundred per cent is assessed upon distilled spirits—whisky—(as is the case in the United States at the present time) every other commodity from which it was proposed to raise revenue ought to be taxed in the same proportion. In like manner under

the customs, all imports—liquors and pig iron, for example—would have to be subjected to one rate of duty. This difficulty, so far as the Federal Government is concerned, has been obviated by an assumption, which the courts have sustained, that a tax “is uniform within the meaning of the constitutional requirement if it is made to bear the same percentage over all the United States”—that is, it must be uniform as regards any particular article in all places; that whisky or any other commodity, for example, shall not be subjected to *Federal taxation* at one rate in one State and at a different rate in another State, but that different articles may be subjected to different rates, provided they are uniform as between different places and different States; as it obviously “could not have been the intent of the framers of the Constitution that the Government in raising its revenues should not be allowed to discriminate in respect to articles which it desired to tax.” \*

In the case of the several States of the Federal Union, to which the Federal constitutional requirement in respect to uniformity of taxation does not apply, the same question—i. e., as to what constitutes uniformity—has been also a troublesome one, but different in its manifestation. The provisions relating to taxation in the Constitutions of these several States generally start with the idea, expressed or implied, that taxes must be uniform; and a strict construction of this language in a tax statute, operative in only one State, and where the Federal limitation of *uniformity* as respects place does not apply, might be construed as restraining the authorities of a State from imposing any different rate of taxation on the manufacture or sale of liquors and the manufacture and sale of other merchandise, or on the land and the business of the agriculturist. These difficulties in the way of construction have, however, been largely obviated by recognising that when in the statute of a State the words “taxes must be uniform” are used, the word “uniform” does not mean, as in the Federal Constitution, uniformity as to “place,” but uniformity “with regard to the subject of the tax”;

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\* Lectures on the Constitution of the United States, Justice Miller, pp. 240, 241.

an interpretation in full conformity with the principle before enunciated, that uniformity of taxation consists in the making of the burden of taxation equal upon all subjects which are in the same field or sphere of competition; or, as has been also expressed by Justice Samuel F. Miller, "different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people and at all times. Take, for instance, the case of a license: if everybody in any particular class is required to pay a certain license—if all lawyers are taxed twenty-five dollars a year, all merchants one hundred dollars, and all saloonkeepers two hundred dollars—then the license taxation is uniform, because it imposes the same burdens upon every man of the same class, who comes within a circle of well-defined limits. . . . This interpretation," he adds, "may be a little strained, but probably it has arisen from the necessity of enabling the Legislatures to levy taxes according to common sense, if not altogether with regard to strict uniformity." \*

The opinions expressed by the State courts of the United States when this question of uniformity of taxation has been practically brought before them, is indicated by reference to the following decisions:

"The Constitution of the State of Pennsylvania provides (Article IX, section 1) that 'all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.' In June, 1885, an act was passed by the Legislature imposing a tax of three mills on the dollar on mortgages, moneys loaned or invested in other States, money capital in the hands of individual citizens, and other classes of property. The act did not extend to corporations, which were taxed at a similar, in some cases at a higher rate, under a statute of 1879. The act of 1885 was opposed on the ground that it violated the constitutional rule of uniformity, but it was declared valid by the Supreme Court of the State, which held that substantial uniformity had been obtained.

"A decision in New Jersey turned upon a constitutional provision that 'property shall be assessed for taxes

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\* Miller, *ibid.*, pp. 241, 242.

under general laws and by uniform rules, according to its true value.' In 1884 the Legislature of the State passed an 'act for the taxation of railroads and canals,' which imposed a tax upon the lands and tangible property used by railroad and canal companies and their franchises, and touching no other property. The constitutionality of this law was questioned by most of the leading companies, but was affirmed by the State Court of Errors and Appeals, which held that as the law was a general one, framed in general terms and restricted to no locality, it operated equally upon a whole class of property, whose characteristics enabled it to be dealt with separately. The court further declared, that as a previous act had secured the companies against being required to pay more than their full share of tax, a substantial uniformity was thus secured."

These and other like decisions of the State courts of the United States show that in order to sustain a tax law under the requirement of generality or uniformity it is not necessary that all property should be taxed, and that a State has the right to select property for taxation at its discretion. Of course, discrimination may result from the exercise by the State of the power of dividing the objects of taxation into classes, but while persons of the same class and property of the same kind are subjected to an equal burden, the constitutional requirements as to uniformity seem to be satisfied.

The fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving any person of property "without due process of law," is also in conformity with the principle enunciated in the above citations; for taxation without jurisdiction, and therefore without the possibility of the correlative return of any protection as compensation, would obviously be an arbitrary exaction and not due process of law. But if property is otherwise (than by taxation) taken by the Government (as by the so-called law of "eminent domain"), full and fair pecuniary return must be made for its value. This is a principle as old at least as constitutional government, and is so important that it is incorporated in the fundamental law of every State in the Federal Union. Article V of the Constitution of the United States

also provides that private property shall not be taken for public use without due compensation. It is clear, therefore, that there must be a line between the taking of private property for public use by the law of eminent domain and by taxation. But how can that line be drawn except by the rule that rightful taxation means uniformity of burden on competing vocations and competing property? The following decision by the Supreme Court of New Jersey is clearly in conformity with this conclusion: "A tax," it said, "upon the persons or property of A, B, and C individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons or property of the class of persons or kind of property subject to taxation, is, to the extent of such excess, the taking of private property for a public use without compensation. The process is one of confiscation and not taxation." (Township Committee of Reading, 35 N. J., p. 66, 1872.)

*Fifth. Taxation should not be employed as an agency or for the purpose of enforcing morality, or as an instrumentality for correction or punishment.*

The punitive or moral idea has probably always entered to some extent as an element in all those taxes which have been levied on luxuries, and more especially on all those forms of luxury which are regarded as frivolous or as mere insignia of wealth and title, such as hair powder, wigs, coats of arms, carriages, etc. But when a government assumes to inquire what are the articles the consumption of which is prejudicial to the interests and well-being of its people, and then embodies the results of such inquiries into its measures of revenue; so that while providing means for the support of the state it also prescribes how the citizen ought to live, dress, eat, or drink, the result is always ineffectual for purposes of revenue, and far more so for the promotion of morality. Examples illustrative and confirmatory of these conclusions are so numerous as to make a selection of them not a little difficult. The following have been cited by the late Sir Morton Peto: "A tax on dice in Great Britain, repealed in 1862, had the ludicrous result of producing for many years a revenue of five shillings per annum from a license of thirty to forty pounds a year on the business of manufacturing



them. Another provision of law was that every person having dice unstamped by the revenue officials in his possession was liable to the penalty of five pounds for each pair! But stamped dice could not be obtained. Every one who wanted dice, even cabinet ministers and revenue officials, purchased square pieces of ivory for a few pence and marked them for themselves. As regards packs of cards, the regulations imposed by a number of complicated acts of Parliament were so stringent that legally cards could scarcely be made or sold. Nevertheless, for many years cards were hawked about the streets unstamped and without a license; and the manufacture of cards for exportation was so flourishing that nearly half a million packs were estimated to be surreptitiously made for exportation at the time the obnoxious taxes were repealed."

Sixth. *No tax should be levied the character and extent of which offer, as human nature is generally constituted, a greater inducement to the taxpayer to evade rather than pay.*

The justification and wisdom of the above maxim find support in a lesser degree from argument than from experience, although the deductions from abstract reasoning ought alone to constitute its sufficient indorsement. It has been pointed out by Herbert Spencer that ideal men are possible only in an ideal state; and, conversely, that a perfect social state is possible only when every unit has achieved perfection. As this condition has not been attained, and until the "millennium" arrives is not likely to be, the inference is legitimate that a large proportion of mankind are not "decently honest," inasmuch as in every variety of business where opportunity for the perpetration of fraud exists, much labour is expended in guarding against dishonesty. This is specially exemplified in the case of railroads, "where tickets have to be dated, punched, and carefully collected to prevent their being used again by the masses."

But it is in matters of taxation that the largest amount of irrefutable evidence is to be found in support of the above maxim. Thus in the case of smuggling or the evasion of duties on imports, the experience of all governments and of almost all countries is to the effect that when sufficient inducement in the way of gain from a violation of the law is offered, such statute can not be



executed even when penalties as severe as death have been made contingent on individual arrest and conviction. But it has been reserved for that nation whose people claim to be the most law-abiding and intelligent, to furnish the most confirmatory evidence on this subject—namely, the United States—the Congress of which in 1865 imposed a tax on distilled spirits amounting to more than fifteen hundred per cent on the then average prime cost of production. The result was, that the Government was only able in 1868 to collect the tax on less than seven million gallons out of an annual product of certainly not less than fifty million gallons; which last, sold as it undoubtedly was at the current market price (tax included), left to the credit of popular corruption at least \$80,000,000.

The United States is confessedly one of the most powerful of nations and governments, but its entire military force can not crush the illicit traffic in refined opium, under a temptation of the realization of six dollars contingent on every pound of this commodity that is successfully smuggled into the country.

## CHAPTER XV.

### NOMENCLATURE AND FORMS OF TAXATION.

#### PART I.

THE most simple form of taxation is a *poll* or *capitation* tax. Both terms may be regarded as identical in use and meaning, but the former is probably more frequently used in tax treatises and discussions.

WHAT IS A POLL TAX?—In a strictly economic sense the essential requisite of a “poll” or “head” tax is that it be laid on all polls or heads, and be unvarying in amount. A varying poll tax would be an arbitrary exaction, and would not be sustained for a moment as a proper exercise of the right of taxation, if laid without reference to a man’s ownership of property. So soon, however, as the amount of the tax exacted is made dependent upon the amount of the property owned, the tax ceases to be a varying poll tax, and becomes a tax on the property itself. The popular idea of a poll tax in the United States is an annual tax, small in amount, uniform as respects rate, and applicable only to adult male persons. Such conceptions are not, however, in accord with historical experience, which is to the effect that uniformity in assessment has never been an essential or even usual feature of this form of taxation, but as a rule the tax has been intentionally rated to the person assessed according to his rank and station and supposed property. The “poll” or “capitation” tax of history has, therefore, been rather an “income” than a per capita tax; and the poll tax of the United States finds few precedents in history. Under the Byzantine Empire a so-called universal poll tax was substituted in lieu of almost all the tithes, customs, and excises which had before been relied on for revenue; and this substitution and its

influence was regarded by Hume as one of the chief causes of the decadence of the Roman state.\*

The first so-called poll tax in England was granted in 1377, and from that date down to the time of Queen Anne was an important source of revenue, and, not being uniform, except in its incidence per capita, gave rise to great popular dissatisfaction, both by reason of its amount and inequality, and also by the inquisitorial methods employed for its assessment and collection. At first (1377) the rate was fourpence on every head, male and female, above fourteen years of age. Subsequently, under the reign of Richard II, in order to avoid the unfairness of subjecting all—rich and poor, noble and serf—to such a uniform tax, a more equitable system was introduced, the taxpayers being classified by reference to rank, condition of life, and property, the rate ranging from six pounds thirteen shillings for dukes and archbishops, to two pounds for barons and knights, and three shillings fourpence on those of “least estate.” The retention of the former uniform rate of fourpence on all married labourers and upon all single men and women above fourteen years of age, who were presumed to be without estate, was, however, a cause of great dissatisfaction among the masses, and the attempt to collect it undoubtedly constituted the prime cause of the famous “Wat Tyler rebellion” of 1381. In the case of the last poll tax authorized in England under Queen Anne a like attempt at classifying persons was continued; the rate commencing at one shilling per annum on all persons worth more than fifty pounds, and rising to ten pounds for peers of the realm, both spiritual and temporal. One curious provision of this final enactment was, that in all cases Catholics were to pay double the rate imposed on Protestants. Bachelors and widowers without children were also subjected to special rates. Some writer has remarked that such exactions could only have been designed and authorized by a government of misanthropes; for if one with a view of escaping them abandoned single blessedness, he only involved himself in greater difficulties; for there was a tax upon marriages, a tax upon births, and, if the health of the victim broke down under these ex-

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\* See *ante*, p. 96.

actions, a sum varying from three to thirty florins, according to his station, had to be paid before his sorrowing relatives could bury him. These taxes on marriages were enforced in England from 1695 to 1705, and during the first five years of their continuance yielded an average annual revenue of about two hundred and fifty thousand dollars. It was noted that their continuance had the undesirable effect of increasing the number of marriages by irresponsible persons, and in a manner devoid of all solemnity. The rates imposed in England as late as 1706 on bachelors and widowers contracting marriage varied according to the class in life to which they belonged; from thirty pounds to twenty-five pounds on the elder sons of the higher orders of nobility to twelve shillings on persons possessed of an income of fifty pounds per annum.

Within a very recent period a petition, numerously signed, has been presented to the French Chamber of Deputies asking that a special tax on bachelors be established in France, and recalls the fact that the French revolutionary Convention of 1789, and some of the old republics, established such a tax. The petition further stated that the number of bachelors in Paris is nearly half a million, while the number of married men is not more than 379,000; and "that such a tax ought to be doubly welcome in France: *first*, because it will increase the declining population of the state by inducing bachelors to marry; and, *secondly*, because it will help to make up a growing deficiency in the national budget." In Switzerland, in the assessment of an income tax and taxes on dwelling houses, certain deductions allowed to married persons with families are not allowed to bachelors or childless married people.

Legislation looking to the taxation of bachelors has also been seriously proposed of late in several of the States of the Federal Union. In Illinois, for example, a bill has been introduced in its Legislature imposing a uniform tax on all single men, sound in mind and body, above thirty-two years, who are not able to show that they have proposed marriage three times—and been rejected. The proceeds of the tax are to go toward establishing a home for worthy and indigent single women above the age of thirty-eight.

A Missouri bill makes the tax progressive, increasing by successive increments as the bachelor persists in his state of single blessedness.

In modern times (1848) an English Governor of Ceylon—Lord Torrington—undertook to repeat the experience of his countrymen of near five centuries before, by imposing a poll tax of three shillings per annum, or one week's labour, valued at three shillings, from every man, rich or poor, in the colony. This exaction, in point of inequality, was worse than the poll tax of Wat Tyler's time, inasmuch as it made the average income of the poorest labourer the standard according to which the rate of taxation was to be established for all. There was also another curious feature connected with this experience. The Cinghalese priesthood were held liable to pay this tax, either in money or a week's work, when their religion required that they must neither perform work nor possess property. The result was a revolt attended with much bloodshed, an abandonment of the tax, and the recall of the governor.

In one of the states of Central America a poll tax was recently required to be paid monthly; all adult male inhabitants of the several towns and cities being obliged to present themselves at the municipal treasuries and pay their dues in person.

In the colonial period of our history the poll tax was enacted by nearly all the North American colonies at one time or another. In Virginia and Maryland it was for a long time the only direct tax; and in the latter State it was imposed upon all free men and free women, and upon all free children over twelve years of age; and was rendered particularly odious and burdensome from the circumstance that its payment was required in tobacco, a given number of pounds to the head, the value of which commodity was not constant, but varied with supply, which at times was intentionally restricted, with the intent of augmenting its market price. There was, however, another side to this experience. The poll tax in the two States named was almost a measure of necessity. Land was of small value, for there was in the new colonies little distinction between improved and unimproved lands. Slaves were not taxable as personal estate, but belonged to the land and figured as real property; and the personal estates of the planters

were comparatively small. Polls were therefore the most available measure of taxation, and tobacco was the currency of the day. All bills and charges were made out in so many pounds of tobacco; all lawyers' and court fees were so determined; the parish and county levies were fixed in weights of tobacco; and the minister drew as his salary so many pounds of tobacco from each parishioner, without respect to the market value of the crop. It accordingly happened that a poll levy might be excessive one year and nominal the next; with lawyers, ministers, and clerks rejoicing in abundant means one season and reduced to starvation point the next. Unequal, in proportion to wealth of the payer, as such a poll tax was, its inequality was furthermore greatly aggravated by fluctuations in the exchangeable value of the medium in which it was payable.

During the colonial period also, in North America, men's persons were included in the schedules of property made in reference to taxation; and instead of having a fixed sum, as was subsequently the rule in assessing a poll tax, the value of the poll was rated according to the earning capacity of the individual; and if he was old and infirm, or in any way disabled, the value of the poll was placed at a small amount.

Possibly by reason of English and American colonial experiences, and perhaps from an infiltration as it were, down through the ages, of the fact that in Greece and Rome the poll tax was exacted only of the people of subjugated provinces, and was therefore regarded as a mark of inferiority or slavery, this tax in modern times has not been in accord with public sentiment, and in most countries has now been abandoned. The last poll tax in England was enacted in 1689. Like all its predecessors, it was always unpopular and was regarded as unsuited to the people of England. It was repealed in 1698, and "henceforth this form of tax passed into the list of taxes tried and never again to be imposed in England. What minister," said Henry Fox in 1748, "would presume again to suggest the hated hearth money of the Stuarts, or the poll taxes of the reign of William III?" \*

In the United States the poll tax formed, in 1895, a

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\* Dowell, *Taxation in England*, vol. ii, p. 49.

part of the tax system of twenty-six of the States and Territories, and was not recognised in twenty others, and in some of the latter its levy is prohibited by constitutional provisions. In New York a general law for the incorporation of villages confers upon its trustees the power to raise money by levying a poll tax.

From a theoretical or purely economic point of view the present popular opposition and adverse sentiment to the poll tax in the United States do not seem to be warranted by any very good reasons. The arguments made use of by those opposed to its continuance are not derived from old-time precedents, or warranted by the experience of foreign countries, inasmuch as its assessment in the States of the Federal Union has always been inconsiderable in amount, and has rarely involved in its collection any inquisitorial or arbitrary measures. The one most deserving of attention has been, that it practically imposed a property qualification upon the right of suffrage by making its payment a prerequisite to the act of voting, a money payment of even so small a sum as two dollars per annum in Massachusetts and one dollar in Connecticut being regarded in that light. But in answer to this it may be said that paupers are disfranchised not because they are vicious or illiterate, but, because of their inability to support themselves or aid in supporting the State, it is held that they ought not to be allowed a voice in the government of the State. To be consistent, therefore, the advocates of the abolition of the poll tax as administered in New England ought also to connect with it—i. e., its abolition—an extension of suffrage to the inmates of poorhouses who, otherwise qualified for its exercise, are now debarred from it exclusively by a lack of property qualification. On the other hand, a leading argument in favour of its continuance is that the majority of citizens who pay no direct State taxes upon property of any kind, but who are self-supporting and not paupers, ought not to be exempt from *directly* contributing to the support of the government, and this argument may be amplified and illustrated as follows: Thus, there is no citizen, be he ever so humble, who is not vitally interested in the preservation and welfare of the civil society of which he is a member; and it is of the first importance, more especially as the tendency of the age seems to be

antagonistic, that each member of society should be encouraged to realize at all times his personal interest in the well-being of the State. To the rich man society comes and exacts a contribution in some proportion to his means, and as a consequence he has inducements to directly interest himself in the fiscal management of the government. To the poor man, who is otherwise rarely *directly* confronted with the tax gatherer, society comes also, and, in common with all citizens of a certain age, asks a very small annual contribution for the support of the State, because each citizen is interested in its existence and welfare, has a measure of responsibility resting upon him, and should be made to realize that responsibility. In the fact, therefore, that the poll tax touches directly every citizen and is an effective agency for awakening him to a sense of his political duties and responsibilities, and so better qualifies him for the exercise of the right of suffrage, is to be found the true reason for the incorporation of a small annual poll tax into every correct system of State taxation.

As has already been pointed out, a poll tax, having regard solely to the person and not to his property, is the only tax to which the term *personal* can be rightfully applied. It is the essence also of every free and just government that every person—the most humble as well as the most exalted—is equal before the law, and has a right to invoke the sovereignty of the State in all its fulness for the protection of his person. Keeping these two points in view, it would further appear that a poll tax assessed equally upon all citizens, and free from all discrimination, represents the most perfect equality of service, and is the only tax which a citizen can pay which can be regarded in the light of a *reciprocal* for the service which the State renders to him in protecting his person, all other taxes being in respect to property or business.

As the Constitution of the United States also excludes from representation "Indians not taxed," it would seem to imply that its authors regarded the exercise of suffrage by a citizen that was not a pauper and paid no direct tax, as an anomaly not likely to occur under a government founded upon equal public rights and responsibilities, and also that a citizen who did not pay any direct tax to the



State was not likely to have any more correct idea or measure of his true relation to the State than a wild Indian.

If, however, public sentiment in any community is so adverse to the levy of moderate poll taxes that their collection is not and can not be enforced with any degree of uniformity and equality, as is reported to be the case in many States, then the advisability of their abandonment can not well be questioned, for the want of respect for all law, which always results from the maintenance upon the statute-book of any law which a community will not regard or permit to be enforced, is an evil that far outweighs any possible good that can come from its continuance. Furthermore, the statement is probably warranted that in no instance in history has it been possible to enforce a permanent tax against which by common consent the public has revolted.\*

In considering the feasibility of its continuance it should not be overlooked that the tax upon property can be collected because the State holds a confiscatory power over the property to the extent of the tax. But the tax upon the non-property-holding polls can not be collected except through the consent of the assessed person, unless resort is had to the old law of imprisonment until payment is made—a remedy not likely to find favour.

The recent experiences of Massachusetts and Pennsylvania are especially worthy of note in this connection. The Constitution of Massachusetts, adopted during the Revolution, limited the suffrage to "every male inhabitant of twenty-one years of age and upward, having a freehold estate within the Commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds." This restriction was abolished in 1821, but payment of a poll tax was still required before a man could vote. In recent years, however, this form of taxation has become so unpopular in this State, mainly by reason of a general belief that politicians, without distinction of party, were in the habit of collecting and disbursing large sums for

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\* In illustration of this, attention may be called to an exposition of the reasons why the California tax on mortgages has been inoperative.—*Plehn, in the Yale Review, March, 1899.*

the purpose of influencing or bribing voters by payment of their poll taxes, that in 1891 an amendment to the Constitution of the State was adopted which, while retaining the previous obligation of the payment of an annual poll tax, abolished such payment as a prerequisite for voting. The result was that before the adoption of this amendment from fifty-two to fifty-nine per cent of the poll tax due in the city of Boston was collected year by year; but since then the percentage of collection has fallen below forty-four per cent. Many of the city's own employees figure among the delinquents, and it has been found necessary to place hundreds of poll bills in the hands of the city treasurer for the deduction of the amount due from their wages. Leaving out the persons who can not pay without great sacrifice, it is stated that Boston is still losing above one hundred thousand dollars yearly in revenue from failure to collect the taxes upon polls that can and should pay. And this, in a modified form, is probably the situation throughout the State of Massachusetts.

In Pennsylvania the State Constitution makes the payment of a State or county tax, at least one month before election, a prerequisite to the exercise of suffrage; and as the poll tax involves the smallest amount of tax that a citizen could pay, it was expected that almost every man would pay it. But, in point of fact, it was found that thousands of citizens neglected to do so, and the political campaign committees, irrespective of party, recognising this fact, have adopted the policy of furnishing voters whom they desired to influence with receipts for the payment of their poll taxes; and this practice has attained to such magnitude in recent years, that the two leading party organizations in the city of Philadelphia alone purchased in the year 1894 over ninety-five thousand such receipts. Obviously this is a form of bribery which is forbidden by the spirit if not by the letter of the law; and to meet such a situation of affairs the Legislature of Pennsylvania has recently (1897) enacted a law forbidding the payment of a poll tax by any other person than the elector against whom such tax is assessed.\*

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\* During the American colonial period some attempts were made to compel the exercise of suffrage by imposing a fine on citizens

*Neither of the judicial authorities above referred to seem to have grasped the great principle essential to the continuance of every truly free state—that the power of taxation should not be invoked for police purposes, but be strictly limited to the raising of revenue to meet legitimate state expenditures.*

“The man who will not buy a tax receipt, but expects his party to purchase it for him, is a bad citizen. He is, in effect, a person who is bribed, and who holds the value of his vote at a very small sum.”—*Philadelphia Times*.

The antagonism between the white and coloured races of the Southern States, mainly contingent on the former toleration of slavery, still continues to a large degree, although both races, by amendments to the Federal Constitution, have been placed on terms of full legal right and

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neglecting to vote at regular elections; the fine imposed in Maryland on citizens in default of such action having been one hundred pounds of tobacco. But since the adoption of the Federal Constitution no legislation of like character is believed to have taken place in any of the States until 1889, when Kansas City adopted a charter provision imposing a tax of two dollars and a half on each citizen who should fail to vote at a general election. This provision coming up for review before the State courts of Missouri, was affirmed in the first instance by a Superior Court judge, who took the ground that “in the enlightenment of the present age it is in the power of the State to compel its voters to exercise the election franchise, and if the State can do so the city is invested with the same power.” After enumerating many things of an arbitrary nature that are done to maintain good municipal government, the judge said that he could see no legal objection to the use of the taxing power for the purpose of securing a full and perfect expression of public sentiment and the election of competent and worthy men to public offices. The position was an advanced one, he admitted, but not an unreasonable one, in view of the fact that “the highest type of government is attained when every voter casts his vote, and that vote is counted just as it is cast.” On an appeal to the Supreme Court of the State, the provision was, however, declared unconstitutional, the language of the decision being as follows: “Taxes may be levied,” it said, “in money or in services having a money value to the public, and he who pays in money does not necessarily have to pay more or less than he who pays in services, and *vice versa*, and it is upon this principle that these taxes are upheld; but who can estimate the money value to the public of a vote? It is degrading to the franchise to associate it with such an idea. The ballot of the humblest in the land may mould the destiny of the nation for ages.”

equality. In no one respect does this antagonism more persistently manifest itself than in opposition on the part of the white citizen voters to the exercise of free and concurrent suffrage by the negro citizens. Yet, in view of the restraints imposed by the Federal Constitution in respect to political or legal discriminations against the negro race, any change in the way of relief from the situation by State enactment has been regarded as impracticable. A recent constitutional convention of the State of Mississippi seems, however, to have at last most ingeniously solved this difficult political problem, by enacting that every citizen (white or black) of established age shall pay a poll tax, the non-payment of which shall exclude him from voting; and the collection of the tax out of exempt or non-taxable property—i. e., the possessions mainly of the poorer classes—was also denied. The intent of this provision was therefore manifestly not to raise revenue, but to exclude negroes from voting by reason of non-payment of the poll tax; and by a like covert purpose the commission of a list of petty crimes which white men do not generally commit, such as thievery, arson, and obtaining money under false pretences, was also made a disqualification of voting; while robbery, murder, and other robust crimes which are practised chiefly by white men were not included.

“Within the field of permissible action under the limitations of the Federal Constitution, the Mississippi convention swept the circle of expedients to obstruct the exercise of the franchise for the negro race.”—*Ratliff vs. Beale, Mississippi Reports*.

Of other terms employed to indicate different forms or methods of taxation, and a clear understanding of the meaning of which is essential to any correct discussion of the subject, the following are the most important:

**DIRECT AND INDIRECT TAXES.**—Taxes are generally characterized or classified as being either *direct* or *indirect*; but these terms, although in common use, are somewhat indefinite, owing to the inability of economists to agree as to their exact meaning; while in the United States this indefiniteness has been increased by the circumstance that its Supreme Federal Court has felt compelled by the language of the Federal Constitution to assign to the term

“*direct*,” as applicable to taxation, a “*legal*” rather than an *economic* definition.

In a general sense the term *direct* is applied to those taxes which are demanded from the particular persons who it is intended or desired shall pay them; and *indirect* to those which are demanded from a person with the expectation and intention that he shall indemnify himself for payment of the same at the expense of some other person.\* There is, furthermore, marked distinction, founded on sound philosophy, between a direct and indirect tax, which, if concisely expressed, will constitute two unimpeachable definitions. Thus an *indirect* tax, whoever may first advance it, is paid voluntarily and primarily (in the sense of ultimately) by the consumer of the taxed article. On the other hand, a *direct* tax has always in it an element of compulsion; not necessarily on the person who advances the tax in block, but on the person who is compelled to use or consume the taxed property or its product. For example, there is nothing compulsory or unequal in an ordinary license tax. If the license is high, no one is compelled to engage in a business covered by its legal requirement; and few persons will until the average profits of the taxed business by the regular laws of competition finally reach the

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\* “In the assessment of indirect taxation, and such as is intended to bear upon specific classes of consumption, the object itself is alone attended to without regard to the party who may incur the charge. Sometimes a portion of the value of the specific product is demanded at the time of production—as in France, in respect to the article of salt. Sometimes the demand is made on entry, either into the State, as in the duties of import; or into the towns only, as in the duties of entry. Sometimes the tax is demanded of the consumer at the moment of transfer to him from the last producer—as in the case of the stamp duty, and the duty on theatrical tickets in France. Sometimes the Government requires a commodity to bear a particular mark, for which it makes a charge—as in the case of the assay mark on silver and a stamp on newspapers. Sometimes it monopolizes the manufacture of a particular article or the performance of a particular kind of business—as in the monopoly of tobacco and the postage of letters. Sometimes, instead of charging the commodity itself, it charges the payment of its price—as in the case of stamps on receipts and mercantile paper. All these are different ways of raising a revenue by indirect taxation; for the demand is not made on any person in particular, but attaches upon the product or article taxed.”—*M. Jean Baptiste Say, Treatise on Political Economy, 1821.*

average profits of other like employments or investments. A tax on commodities like whisky, tobacco, fermented liquors, oleomargarine, playing cards, dice, and the like, can always be avoided as a primary tax, or can be paid at discretion. But there is nothing voluntary in the payment of a tax upon *all* real or personal property, or on the income of such property. Human beings can not subsist without some forms of personal property, and therefore a tax upon all personal property or its income is of necessity compulsory and not voluntary. Any general assessments of personal property on or by reason of its income, as well as assessments on real estate, are unavoidable in their nature, and therefore, from a philosophic or economic point of view, are typically direct taxes.\*

The presence or absence of the principle of compulsion as constituting the essential difference between a direct and an indirect tax has not, it is believed, been before generally recognised by economists. And yet it is clearly involved or comprised in the definitions given by acknowledged authorities on the subject. Thus M. Leroy-Beaulieu, in his *Traité de la Science des Finances*, characterizes those taxes "as direct which the legislator intends should be *paid at once* and immediately by him who bears their burden. They strike at once his fortune or his revenue, and every intermediary between him and the treasury is suppressed." McCulloch (*Principles of Taxation*) describes a tax "to be direct when it is *immediately* taken from property," and *indirect* "when it is taken from its owners by making them pay for liberty to use certain articles or exercise certain privileges." M. Say defines a direct tax to be the "*absolute demand* of a specific portion of an individual's real or supposed revenue." (*Political Economy*, p. 461.)

In the assessment of direct taxes a proportionality is generally sought between the person who pays and the value of his property, or ability to pay. Thus, in the taxation of watches, which are popular subjects for direct taxation, the proportionality between the owner who pays and the amount of property rated is recognised and maintained, by imposing, as in the city of Philadelphia, a tax of one

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\* See Alexander Hamilton's brief in the Carriage case, Hamilton's Works, vol. vii, p. 848.

dollar on watches of gold and one of seventy-five cents on watches of silver. In the assessment of indirect taxes the maintenance of any proportionality between the taxpayer and his fortune is not regarded. The idea of a *personal* assessment, which is characteristic of direct taxes, furthermore does not apply to indirect taxes, and the person upon whom the incidence of such taxation primarily falls may be regarded as advancing rather than paying the tax, which is ultimately paid by a consumer, not as a tax, but as a part of the market price of a commodity.

In other words, the general effect if not the avowed object of an indirect tax is to place its burden in a round-about way on the person who ultimately bears it. Taxes on imports, or customs dues; most internal revenue taxes; "octroi" taxes, or taxes levied by municipalities on commodities—mainly articles of food—brought within their limits from without; stamps and fees for registering or verifying documents, are typical examples of indirect taxation.

The objections to this form of taxation are so great as to warrant their characterization as evils. In the *first* place, they prevent the taxpayer from knowing what he pays, by mixing up the price of an article with the tax, as has been already noticed. *Secondly*, they enhance the cost of a commodity to the consumer to a degree (often largely) in excess of the original burden of the tax. Thus, if an importer of sugar, salt, wool, coal, or metals pays taxes on these commodities when they enter the territory of another country (as, for example, that of the United States), he adds them to the first or invoice cost of the importation. On this aggregate he calculates and adds interest and profits when he sells to a wholesale dealer; and this process is repeated by every smaller dealer or retailer through whose hands the commodities pass on their way to final consumption; and as the number of such intermediaries is greatest in the case of articles sold by small retailers, the final burden of the tax is greatest on the very poor, whose necessities compel them to buy in very small quantities.\* There is thus a very

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\* Some years since, at the instance of the writer, the late Charles L. Brace instituted an examination to determine the dif-



real and close connection between indirect taxation and pauperism.

In dealing with the relative influence of direct and indirect taxation, Mr. Gladstone, when Chancellor of the Exchequer, took the position in a parliamentary discussion in 1859 that "the distinction between them involves the question between rich and poor. All classes pay indirect taxation: the middle and wealthy pay direct; but indirect taxes press much more seriously on the labouring population."

An instructive comparison of the method and influence of direct and indirect taxation may be instituted by supposing the two systems to be put into practical operation under similar circumstances, for effecting a purpose which all are willing to admit is most desirable or necessary. For example, a town meeting is held to provide means for building a bridge. The direct and honest way would be to assess and levy an equitable tax, adequate to provide for the proposed expenditure, on the property of the citizens of the town. An indirect way, as exemplified by the tariff (omitting the complicated machinery for appraising merchandise), would be to provide that the storekeepers of the town should charge, on account of the proposed expenditure, an excess over general prices to the extent of two cents a pound on sugar, twenty-five cents more per yard on woollen cloth, five cents more for each tin pail or cup, and, keeping an account, return the results of the extra prices paid on the above-mentioned and other like commodities by their consumers, to the town treasury. Would it not be evident that under such a method of procedure the wealth of the town would in a great degree

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ference in price to individual consumers of coal bought in comparatively large and small quantities. He reported that, as a rule, when coal could be delivered at private residences in the city of New York (at the time when the investigation was made) for four dollars and a half per ton, its cost to the people whose poverty compelled its purchase by the "bucketful" was at least twelve dollars per ton. And yet when subsequently a philanthropic capitalist proposed to remedy this grievance of the poor by selling coal bought in small quantities at greatly reduced rates, his attempt did not meet with the full approval of the people whom he desired to serve, by reason of an inference by them that the project must in some way be a scheme for the promotion of private gain rather than public good.



escape taxation for the construction of the bridge, and that its expense and burden would fall mainly upon the poor; inasmuch as the average amount of consumption of sugar, cloth, and tin by the citizens of the town, and the average per capita taxation contingent on the same, would have no just or uniform relation to their ability to pay for the same? A man with ten thousand a year income will not probably consume ten times as much sugar as one with one thousand a year.

In the case of imported commodities charged with import duties, not only is the price of the imported commodity enhanced directly by the duty, but the price of a much larger quantity of competing product of domestic origin is increased to approximately the same extent. Thus, in the case of iron and steel, the average difference in the prices of these commodities in England and the United States during the ten years from 1878 to 1887 inclusive, occasioned by the imposition of indirect customs taxes by the latter country on such a comparatively small proportion of its domestic consumption as was imported, increased the cost of the *total* consumption of these products in the United States during the period mentioned, to the extent of at least \$550,000,000. Such an increase represented an average of \$55,000,000 per annum in excess of the cost of a like quantity to consumers in Great Britain during the same period; an aggregate, according to the census data of 1880, in excess of the entire capital invested in the iron and steel industries of the country, including all its mines of both coal and iron.

An incident also illustrative of the character of an indirect tax was afforded some years ago when it was proposed in Washington to ex-Governor Warmoth, of Louisiana, as representative of the sugar-producing interest of that State, to substitute a bounty on domestic sugars in place of the protection afforded by the then tariff (taxation) on the importation of foreign sugars. The suggestion was repelled with no little warmth, on the ground that such a substitution would be most prejudicial to the domestic sugar industry. "The people," he said, "know that a bounty is a tax, and as soon as they found out its amount would insist upon its repeal, and thus the sugar interest would lose both the protection of the tax on foreign com-

petitive imports as well as the bounty." How far subsequent events harmonized with this forecast by Mr. Warmoth is worthy of brief notice in this connection. Congress in 1891 entirely repealed all the tariff (tax) on the importation of raw sugars, and to compensate the domestic producers of sugar for the abrogation of the protection which had been previously given them, authorized the payment by the Federal Government of a bounty of from one and three fourths to two cents per pound on their product. In a little more than four years subsequently, when the effect of the bounty—aggregating over \$30,000,000 and representing nearly the whole cost of producing the sugar entitled to bounty—had been fully recognised by the public, Congress repealed the act authorizing its payment without restoring the former protective duties; and with such a pronounced approval of its action on the part of the people of the United States as to render it almost certain that no Congress will hereafter authorize the direct payment of bounties by the Federal Government for any purpose.\*

**THE RELATIVE BURDEN ON TAXPAYERS OF DIRECT AND INDIRECT TAXATION.**—Any discussion of this subject would be incomplete that failed to notice the estimates of the relative burden on taxpayers of direct and indirect taxation by persons well qualified by study, and administrative tax experience, to express an opinion.

It is not a matter of dispute that the cost of collecting

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\* The fundamental question involved in this sugar-bounty matter has never been passed upon directly by the Supreme Court of the United States; but the disbursement of the money voted by Congress for the payment of the sugar bounties having been withheld by the Comptroller of the United States Treasury on the ground that the appropriation was unconstitutional, the case came up before the United States Court of Appeals of the District of Columbia, which sustained the opinion of the Treasury official, and was adverse to the claim that "the general welfare" clause of the Constitution might be stretched to encourage the production of a commodity by a bounty. "If to Congress be conceded," it said, "the power to grant subsidies from the public revenues to all objects it may deem to be for the general welfare, then it follows that this discretion renders superfluous all the special delegations of power contained in the Constitution, and opens a way for a flood of socialistic legislation, the specious plea for all of which has ever been 'the general welfare.'" For further notice of this celebrated case see *ante*, p. 299.

direct taxes is, as a rule, much less than is the case with indirect taxes, and that of the receipt contingent on the former the largest proportion accrues to the Government. Thus in Prussia, where the administration of taxation may be characterized generally as despotic, the cost of raising revenue from direct taxes has been reported at four per cent and of indirect at twelve per cent. Under a direct tax system everybody knows how much he really pays, and if he votes for war or any other expensive national luxury, he does it with his eyes open to what it costs him. If all taxes were direct, taxation would be much more apparent than at present, and there would be a continuous popular demand, which at present there is not, for economy in public expenditures.

In England it has been estimated that for every *fifty* millions of indirect taxes paid into the exchequer, *seventy* millions are finally taken from consumers; and M. Guyot, late French Minister of Public Works, has recently shown, by a series of statistical diagrams, that the *octroi* system of indirect taxation in France adds on an average twenty per cent to the cost of goods to consumers over and above the tax.\* In New Zealand, where a comparatively small population and limited and definite sources of revenue have afforded extraordinary facilities for making an analysis, an expert has recently calculated that for every million and a half collected through the customs the people of that colony have paid not less than a million and two thirds.

In 1851 a committee of the Liverpool (England) Financial Reform Association published a statement that a careful investigation instituted by it showed that the difference between the net amount paid into the exchequer from indirect taxes and the gross amount taken through or in consequence of this system from the taxpayers, was not less than an average of thirty-seven per cent; and added that the evidence that had led to this conclusion "can neither be controverted as matter of fact, nor strengthened as a matter of argument."

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\* It seems incredible, he is reported as graphically saying, "that Frenchmen, usually so sensitive to ridicule, can quietly submit to be 'sweated' and 'plucked' like fowls, without crying out against this antiquated method of indirect taxation only so long as they are kept blind to the tax."

In 1846 Hon. Robert J. Walker, then Secretary of the Treasury, in accordance with instructions from the United States Senate to report the extent to which the price of domestic products was enhanced by the then existing duties imposed on the import of competing commodities, submitted the following statement: "The revenue from imports last year exceeded twenty-seven millions of dollars, of which, twenty-seven millions are paid to the Government upon imports, and forty-four millions in enhanced prices of similar domestic articles. This estimate is based upon the position that the duty is added to the price of the import and also of its domestic rival. If the import is enhanced in price by the duty, so must be its domestic rival, for, being like articles, their price must be the same in the same market." \*

In a debate in the Constitutional Convention of the State of New York in 1867-'68, the late Hon. George Opdyke, a member, and one of the best economic and fiscal authorities of his time, stated that his investigations had led him to the conclusion that consumers of imported articles in the United States are "charged with at least fifty per cent in addition to the duties actually received by the Government."

As the result of a careful study of the subject, based on the rates of duty imposed by the tariff law of March, 1883, Hon. William M. Springer (for a long time a prominent member of Congress) was led to the conclusion that the average increase in the prices of domestic commodities due to the duties imposed on the import of competitive products had not been less than \$556,000,000 for every year of the twenty years next precedent to 1883, "making an aggregate of over eleven billions of dollars, not one dollar of which went into the national Treasury." (See *North American Review*, vol. cxxxvi, No. 319.)

The experience of the indirect taxation of commodities also shows that they favour the concentration of business in a few hands, or the creation of monopolies. Of this the

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\* Senate Document, First Session, Twenty-ninth Congress, 1845-'46. This estimate was founded on an apparently careful investigation of the prices "of sixteen leading domestic articles and the manufactures thereof, similar to those on which the present duties (1845) are imposed."

experience of the internal revenue system of the United States has furnished some curious examples. Thus a tax was imposed in 1864 on matches at the rate of one cent per package of one hundred or less; and, although comparatively insignificant, it yielded at one time, by reason of the immense number of matches consumed, an annual revenue of over \$3,500,000, which sum the manufacturer was obliged to advance by purchasing and affixing stamps to each package as a prerequisite to selling. To manufacturers furnishing their own design for the stamp, the Government allowed a discount of ten per cent on stamps of an aggregate value in excess of five hundred dollars purchased at any one time, and sixty days' credit to such manufacturers as could offer satisfactory security (i. e., in the form of United States bonds) for their payments. Under such circumstances small manufacturers with a limited capital were crushed, and the business of manufacturing concentrated in a very few firms, which raised the retail price of matches to an extent considerably in excess of the amount of the tax. In later years (1883), when it was proposed to repeal this tax, the singular spectacle was afforded of the larger manufacturers strenuously exerting themselves to influence Congress to prevent the repeal, and asking that they might continue to be taxed. Their efforts were, however, unavailing. The tax was abolished, and the retail price of matches immediately declined all of sixty per cent—i. e., from fifteen cents to six cents for six boxes.

Many years ago the late Henry C. Carey characterized indirect taxation in the following forcible and figurative language: "The whole system of indirect taxation," he said, "is mere petty larceny. It is an attempt to filch that which can not be openly demanded. It is one of those 'inventions' of man by which the few are enabled to grow rich at the expense of the many, and is therefore greatly favoured by that class of men who prefer living by the labour of others to living by their own. The man who plunders a city is of the same species with the highway robber. The one who imposes indirect taxes is of the same species with the *chevalier d'industrie*. All belong to the *genus* of great men. All are equally destitute of manly or generous feeling. The plunderer of cities selects those

which are weak and defenceless, and the collector of indirect taxes selects the commodities used by poor men who can not defend themselves; and where the system most prevails, men are most weak and cheap and food most dear." \*

And yet Mr. Carey's name, more than that of any other citizen of the United States, is identified with a system of raising revenue which is based exclusively on indirect taxation.

Mr. Henry George, in one of his essays, also thus forcibly makes clear a leading characteristic of the indirect taxes levied by the Federal Government: "Propose," he says, "to abolish, or even reduce, one of these taxes, and Washington will be filled with lobbyists begging and working for its extension. What does this mean? It means that these taxes yield revenue to private parties as well as to the Government."

Carlyle was not far out of the way in characterizing legislators who advocate indirect taxation as having a purpose, "that those who are not hungry should suppress those who are. The pigs are to die—i. e., be subject to taxation—no conceivable help for that; but we, by God's blessing, will at least keep down their squealing!"

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\* H. C. Carey, *Past, Present, and Future*, pp. 464, 465. "So long as it (indirect taxation) shall be permitted to exist, depopulation, and the system of large revenues, raised by means of indirect taxation, to be squandered by those who live by managing the affairs of others, must continue. So long as it exists, the planter and farmer must continue to give a large portion of their small product in exchange for a small quantity of clothing. So long as it exists, every attempt at the establishment of freedom of trade must be a failure. With its correction, every obstacle to the establishment of perfect freedom will disappear, and the tariff will pass out of existence. The interest of every farmer and planter, and of every labourer and mechanic, is directly concerned in the adoption of a measure that shall be calculated to promptly produce the effect desired—i. e., repeal of indirect taxation—but it is not more his interest than his duty. So long as the present system shall continue, trade of every kind must be subject to violent fluctuations which enable the few to enrich themselves at the expense of the many, and enable gambling speculators to live in palaces and ride in coaches by aid of indirect taxation levied upon the hard-working mechanic and honest trader, ruined by changes in the value of their property. It is therefore the bounden duty of every man desirous to promote the great cause of morality, justice, and of truth to unite his efforts with those of his neighbour for the early accomplishment of this great object" (pp. 471, 472).

The question of the relative merits of the two systems of taxation under consideration has long been—since the days of Jeremy Bentham—a subject of discussion, with a trend of popular sentiment unmistakably in favour of indirect, or it should rather be said in opposition to direct, taxation.\*

What satisfactory explanation can be given for a conclusion so clearly adverse to public interest? John Stuart Mill has attempted it as follows: "The feeling is not grounded on the merits of the case, and is of a puerile kind. An Englishman dislikes not so much the payment as the act of payment. He dislikes seeing the face of the tax collector and being subjected to his peremptory demand. Perhaps, too, the money which he is required to pay directly out of his pocket is the only taxation which he is quite sure that he pays at all. That a tax of two shillings per pound on tea, or of three shillings per bottle on wine, raises the price of each pound of tea and bottle of wine which he consumes by that and more than that amount can not indeed be denied. It is the fact, and is intended to be so, and he himself is perfectly aware of it; but it makes hardly any impression on his practical feelings and associations, serving to illustrate the distinction between what is merely known to be true and what is felt to be so." †

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\* "We find, as the result of our examination and contrast, that direct taxation is, in every essential feature, vastly superior to our present method; that the former accords with justice, economy, and all the other requirements of a sound policy; while indirect taxation violates every principle on which legislation should be based. It must be owned, however, that notwithstanding the weighty objections to the one and the economy and perfect fairness of the other, there are few of our citizens who are desirous of making the proposed change. Direct taxation is a phrase that grates on the nerves of all. Men start at its sound as though it was a portent of evil; something which had impressed them with deadly fear. They seem to regard it as deeply imbued with the spirit of tyranny, to say the least, if not as the most forbidding impersonation of that monster. So unpopular is this method of taxation that an aspirant for public station or honours would as soon think of committing high treason as propose or advocate it; and if his ambition were bounded by the present, he would be right, for he could not more effectually destroy his popularity."—*Treatise on Political Economy, by George Opdyke.*

The tendency has more recently been toward direct taxes in every country except Great Britain.

† Mill, *Principles of Political Economy*, book v, chap. vi, § 1.



Mr. Mill also expressed the opinion that men's minds are so little guided by reason on this subject that if it was attempted to raise all the imperial revenue of Great Britain by direct taxation, the dissatisfaction on the part of the people at having to pay so much would be extreme.

Speaking on this subject in the House of Lords in 1860, the Earl of Derby said that "by making the whole revenue of the United Kingdom depend upon direct taxation the pressure would be so odious that wars would be avoided, because no party would incur the odium of carrying them on."

There can be no doubt that high direct taxes, making evident to the most unobservant citizen the excess of burden imposed upon him, have been the prime cause of the repudiation of public debts in the United States, and the arrest or ruination of internal improvements of great importance.

Mr. George Opdyke, in his *Treatise of Political Economy*, advanced the idea that the phenomenon of preference for indirect taxation in the United States might be accounted for in part by the fact, that the unjust manner in which taxes were levied by Great Britain on her American colonies engendered in the public mind of their people "a deep-seated hatred of every form of taxation; and the direct being its most visible or sensible form, it has been mistaken for the worst—an impression that was strengthened when the most unpopular of our Presidents (the elder Adams) recommended this policy, and when the opposing political party, seizing the occasion to profit by public prejudice, represented it as the worst form of tyranny." \*

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\* An acute economic student and observer writes as follows on this subject: "I have been very much struck by the apathy of taxpayers to the increase of taxes in their most direct form. Take Philadelphia, for example. Nearly every man owns a house there, and yet there seems to have been no objection to the grossest municipal extravagance, entailing heavier and heavier burdens every year. The city to-day levies about ten times as much per head as it did thirty or forty years ago. The exact figures would be easy to get, and would certainly point a moral adverse to your view that direct taxation is twin brother to public economy. I am inclined to look for an explanation to the fact that real estate values have steadily risen, so that after all the increase of taxation has been easily met."



An economic phenomenon in connection with this subject goes far to support the idea that political economy can not be an exact science, inasmuch as it is largely or wholly based on human action, concerning which nothing certain and invariable can be predicated. Thus the argument and evidence are complete that it is not a wise, humane, or perhaps a moral policy for a state created or maintained for the purpose of promoting the interests of its people to adopt a system of indirect taxation for the raising of revenue; and, furthermore, that it is contrary to human nature for a people to desire or be willing to pay more for any service or commodity than it is intrinsically worth; or, what is the same thing, perform more work in return for the same than is a fair equivalent. And yet both governments and the people in all countries and at all times (including the present) have shown a preference for this system of taxation over any other.

One explanation of this curious inconsistency is as follows: It is and ever has been the aim of all governments to avoid responsibility and occasion for popular criticism in respect to their financial policy; and a direct tax is an annual reminder to their citizens or subjects of the burden of government, and prompts them to hold the government to a strict accountability. Under a free or popular form of government a general system of direct taxation would practically call for an annual judgment of the voters on the fiscal policy of an administration in power, and such a tightening of the purse-strings as would reverse such policy in case of its popular disapproval. But with a system of indirect taxation, as a tariff on imports, a government can undertake the most unnecessary and extravagant measures and obtain revenue sufficient to defray its contingent expenditures without general popular disapproval.

Indeed, the best defence that can be offered for the continued resort to indirect taxation is, that with the present large demands on the part of all civilized states for revenue to meet increasing fiscal obligations, mainly incurred for war expenditures, past and present, and the unwillingness of the people to pay direct taxes, it would be practically impossible to maintain the modern government without large contributions from people of limited resources; and

that this purpose can only be accomplished by taxing them indirectly. On the other hand, it may be replied that if direct taxation was alone made the agency for obtaining revenue, unnecessarily large expenditures through the resistance of the masses would not be possible. In like manner, if the present indirect taxes levied on imports by the United States were to be replaced by direct taxes, collected in money or in kind from purchasers for final consumption, on whom the burden in both cases finally rests—if every person buying silk or sugar were stopped by a government tax gatherer at the door of the place of purchase and thirty per cent of his purchases taken in kind in one case and fifty per cent in the other in payment for taxes, it is safe to say that such a system would not continue operative any longer than would suffice for the people, through legal methods, to compel its modification. One explanation—i. e., of inconsistency—on the part of the people who pay taxes is, that although the benefits derived from the institution of government (which practically can not exist without taxation) are of the first importance, they are not so very obvious, nor so striking, as to be readily recognised and appreciated by the masses, who are accordingly apt to look with complacency upon a direct (personal) demand for a tax in the light of a compulsory payment, for which no equivalent is returned. Indeed, this feeling is so strong that it has become an almost popular maxim in all countries that “there is nothing which a person so hates to do as to pay taxes,” in case they are direct. But “by the ingenious plan of taxing articles on which incomes are expended, rather than openly demanding a portion of the income itself, the amount of taxation is concealed from the mass of taxpayers, and its payment is made to appear in some measure voluntary. The indirect tax being generally advanced rather than paid, as has been already shown, in the first instance by the importers, the ultimate purchasers for consumption confound the tax with the natural price of the commodity. No separate demand being made upon them for the tax, it escapes their consideration, and the article which they receive seems the fair equivalent of the sacrifice made in acquiring it. Indirect taxes have also the advantage of being paid by degrees, in small portions, and at a time when the commodities are

wanted for consumption, or when it is most convenient for the consumer to pay them." \*

In the attempt, furthermore, of civilized rulers to maintain a civilized government over an uncivilized people, there seems to be no practical method of compelling such a people to help maintain a proper and desirable government except through a resort to indirect taxation. Thus, in British India, a country of low civilization, small accumulation of wealth, and under such climatic conditions as necessitate the minimum of clothing, shelter, and food, the only way by which the mass of the native population can be compelled to contribute anything whatever, apart from a tax on land in the form of rent, toward the support of a government whose beneficent and civilizing influence has become a matter of history, is by the taxation of salt, the consumption of which is a necessity to all, and the production and distribution of which can in a great measure be controlled.

In the British island and colony of Jamaica, populated mainly by emancipated blacks and their descendants (557,132 out of a total of 580,804 in 1881), who own little or no land, and consume little of food other than what is produced almost spontaneously, the problem of how to raise revenue by any form of taxation for defraying the necessary expenditures of the Government has been one of great embarrassment. For the year 1884 these expenditures averaged three dollars and forty cents per head of the entire population, and of this amount an average of about fifty cents per head could only be obtained from any internal taxation, and this mainly through the indirect agency of licenses and stamps, and not by any direct assessment. The balance of required revenue was obtained from a special tax on some set manufacture, and from export and import duties. A similar state of affairs in Mexico, heretofore noticed somewhat in detail (see page 139), would also seem to necessitate a resort to a system of indirect taxation.

Attention is here also particularly directed to a fact that has escaped the notice of many economic and fiscal authorities and writers, and that is the remarkable change

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\* J. R. McCulloch, *Taxation and the Funding System*.

that has taken place within the last fifty years in the British tax system, whereby, through an extensive substitution of direct for indirect taxation, the burden of tax incidence has been shifted to a great extent from the community at large to the propertied classes. Thus, in 1841-'42, indirect taxes yielded seventy-three per cent and direct taxes twenty-seven per cent of the total imperial revenue, but in 1895-'96 indirect taxes yielded fifty-two per cent and direct taxes forty-eight per cent. Is not the inference warranted, that in the change in the incidence of British taxation above noted is to be found at least a partial explanation of the remarkable and progressive increase, in comparatively recent years, in the consumption of the various commodities that enter into the living of the labouring classes of Great Britain, and is it not also singular that the above facts and their possible inference do not as yet seem to have attracted the attention of those most interested in social economics?

## CHAPTER XVI.

### NOMENCLATURE AND FORMS OF TAXATION.

#### PART II.

THE nature and scope of the "legal" and wholly anomalous definition (to which reference has been made, see page 341) that has been given in the United States by its Supreme Court to a *direct* tax,\* and the interesting judicial and historical circumstances in connection therewith, are substantially as follows:

The Constitution of the United States provides that "representatives and direct taxes shall be apportioned among the several States according to their respective numbers"—that is, population—"and excluding Indians not taxed." The origin of the idea thus incorporated in the Constitution of apportioning direct taxes according to representation, or population, rather than upon property, is not certainly known, and has been made the subject of speculation. Hamilton, subsequent to the adoption of the Constitution, suggested that the writings of the French economists of the eighteenth century, with which a number of the prominent members of the Constitutional Convention were familiar, were its source. These held that "agriculture was the only productive employment, and that the net product from land, to be found in the hands of the landowner, is the only fund from which taxation can draw without impoverishing society." They were ac-

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\* Chief-Justice Chase on more than one occasion judicially intimated that the definition of direct taxes by political economists can not be used satisfactorily for the purpose of construing the phrase in the Constitution of the United States. Thus, a tax on the circulation by banks of State bank notes was held not to be direct (*Veazie vs. Fenno*, 8 Wallace, 533-546), and so also of a tax on incomes of insurance companies (*Pacific Insurance Company vs. Soule*, 7 Wallace, 433).

cordingly led to class taxes habitually as direct when laid immediately upon the landowner, and as indirect when laid upon somebody else, but in their opinion destined to be borne by the landowner ultimately. Precedents for levying taxes by apportionment were also to be found in the French *taille réelle*, which was a tax on the income of real property and laid by apportioning a fixed sum among the provinces and requiring from each its quota. The English land tax, established under William III, embodied a like provision.\*

Be this as it may, the distribution of property (wealth) among the people of the American States at the time of the adoption of the Federal Constitution, as shown by the debates in the Constitutional Convention, was, very curiously, such that an apportionment of taxes according to population and representation was not inequitable. When the subject was under discussion, Roger Sherman, of Connecticut, said he "thought the number of people alone the best rule for measuring wealth as well as representation" (Elliot's Debates, v, 297). Mr. Gorham, of Massachusetts, "supported the propriety of establishing numbers as the rule. He said that in Massachusetts estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of people, and it had been found, even including Boston, that the most exact proportions prevailed between numbers and property" (ibid., 300). Mr. Wilson, a leading member from Pennsylvania, said that, "taking the same number of people in the aggregate in the western settlements of Pennsylvania and in the city of Philadelphia, he believed there would be little difference in their wealth and ability to contribute to the public wants" (ibid., 301). Dr. Johnson, of Connecticut, "thought that wealth and population were the true, equitable rules of representation; but he conceived that these two principles resolved themselves into one, population being the best measure of wealth" (ibid., 303). And when the vote came to be taken in the Federal Convention on the propo-

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\* For further discussion of this subject, see paper by Prof. Charles F. Dunbar, contributed to The Journal of Economics, for July, 1889, and entitled The Direct Tax of 1861.

sition that direct taxation ought to be proportioned to representation, it passed without opposition (*ibid.*, 302).

In the five occasions—1798, 1813, 1815, 1816, and 1861—in which the Federal Government has established a general system of direct taxation, there has been no essential and radical difference of opinion in respect to the methods and instrumentalities by which the provisions of the enactments could be made effective for the purpose of raising revenue. The amount of money desirable to raise was first determined. Then the population of each State was taken, according to the latest preceding census, and the proportion of tax proceeds respectively due was calculated.\* A statute was then passed declaring that each State should pay to the Federal Treasury so much money, according to its ascertained proportionate liability of the aggregate amount which the entire Union of the States was required to raise. In each of the first four cases of such a system of taxation the several States were empowered to assume or assess in their own way the sums for which they were severally assessed and liable to pay into the national Treasury. In the case, however, of the levy in 1861, eleven States openly in insurrection against the Federal Government, one loyal State, and one Territory (Utah) refused or neglected to pay their assessment; whereupon a law was passed by Congress authorizing the appointment of special officials, whose duty it was to go into such States as soon as it was practicable and levy the proper assessments, seizing and selling real property whenever it became necessary to enforce payments of the amount required. And these provisions of law were enforced by threat or action to such an extent that about \$2,800,100 were collected up to 1870, out of an aggregate quota of \$5,153,891 due from all the States that adopted ordinances of secession; the total amount assessed on all the States having been \$20,000,000.

The confusion attendant on the settlement after the war of the unpaid liabilities of the impoverished insurrectionary States to the Federal Government, on account of the direct tax of 1861, finds further illustration in the cir-

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\* Up to and including the direct tax of 1861, its imposition was scrupulously made in accordance with the understanding of the framers of the Constitution. Thus, the ratio of the State of New York in 1861 was returned at \$2,602,918 $\frac{1}{2}$ .

cumstance, that the Comptroller of the United States Treasury decided in 1883 that the sum of \$35,555, appropriated by an act of Congress to refund to the State of Georgia money expended by it in 1777, or one hundred and six years previously, for the common defence in the War for Independence, should be paid to the Treasurer of the United States, "to the credit of Georgia on account of direct taxes charged against the State." The Supreme Court of the United States also decided in 1887 (*United States vs. Louisiana*, 37, 123) that the direct-tax law in 1861 did not create any liability on the part of a State to pay the tax; and that the apportionment merely designated the amount to be levied upon the property of individuals in the several States, without any liability attaching to the State in its political and corporate character. "This decision finally left the unpaid quota of the direct tax of 1861 in precisely the same position as any other tax assessed upon individuals, which the United States has been unable or has neglected to collect in full." \*

At the time when it was proposed to enforce the tax on defaulting States by the seizure and sale of land, a doubt was expressed whether the tax in question was, in its essence, "a tax on the land and all the various estates into which the fee may have been divided, or was a tax on the owner of the land and levied on the interest of the owner in it, and on no other subordinate or incorporeal interest. But no tax was ever collected or any land sold under the act of seizure and sale."—*Hillard, Law of Taxation*.

But, apart from a unison of opinion as to the methods by which a direct tax should be levied and collected under the Federal Government, the determination of what is a *direct* tax has not been an easy matter; and the question came up for solution before the United States Supreme Court shortly after the adoption of the Constitution, or in 1794, in a case that has become historic in the annals of American jurisprudence.

Congress having imposed a tax on pleasure carriages—or chariots, as they were then termed—its collection was resisted by one Hylton, of Virginia, on the ground that

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\* Dunbar, Direct Tax of 1861, Quarterly Journal of Economics, July, 1889.



such a tax was a direct tax, and had not been apportioned among the States, as required by the Constitution.\* The court held that the tax in question was to be considered as a tax on the expenses of living and not a direct tax within the meaning of the Constitution, as the evils which would attend its apportionment according to population would be so great "that the Constitution could not have intended that an apportionment should be made." "The Constitution," said the Court, "evidently contemplated no taxes as direct taxes, but such as Congress could lay in proportion to the census. A tax on carriages can not be laid by the rule of apportionment without very great inequality and injustice. Suppose two States, equal in census, to pay eighty thousand dollars each, by a tax on carriages of eight dollars on every carriage, and in one State there are one hundred carriages and in the other one thousand. A, in one State, would pay for his carriage eight dollars; but B, in the other State, would pay for his carriage eighty dollars." (Opinion by Justice Chase, 3 Dall., 171.)

These, and other decisions of the United States Supreme Court, have accordingly been regarded as affirming, that within the meaning of the Constitution of the United States there are only two forms of taxation that can be considered as *direct*—namely, a capitation or poll tax, simply, and without regard to property, profession, or any other circumstance, and a tax on land; and that no other taxes can be regarded as direct by the Federal authorities. It is also worthy of note that since the decision in the carriage case in 1796, Congress, in the few instances in which it has imposed a tax which it recognised as direct, has never made it applicable to any objects other than real estate and slaves.

The following additional memoranda are pertinent to this discussion: While the carriage case was pending before the United States Supreme Court in 1796, Mr. Madison, who participated in the convention that framed the Constitution, wrote to the effect that the action of Congress in imposing this tax was constitutional, but that he doubted whether the court would so regard it. Hamilton, who

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\* *Hylton vs. The United States*, 3 Dallas, 171.

appeared as one of the counsel for the United States in this case, also left behind him a legal brief in which he says: "What is the distinction between *direct* and *indirect* taxes? It is a matter of regret that terms so uncertain and vague on so important a point are to be found in the Constitution. We shall seek in vain for any antecedent settled legal meaning to the respective terms. There is none. We shall be as much at a loss to find any disposition of either which can satisfactorily determine the point." In his argument on behalf of the Government in the carriage case, Hamilton, however, mentioned such taxes which should be considered as direct; namely, direct capitation taxes, taxes on land and buildings, and general assessments, whether on the whole property of individuals, or on their whole real or personal estate.\* And in rendering the decision in the income-tax case of *Springer vs. United States*, Justice Swayne also added to our historical information on this subject by remarking, that "the question of what is a direct tax is one exclusively of American jurisprudence," which is the same thing as saying that the system of American taxation is so peculiar, that the question involved has never been made a subject of legal controversy and discussion under any other or foreign system of taxation.

This statement of Judge Swayne is one of a number of illustrations that will confront the student of the existing American system of taxation—if, indeed, it is worthy of being called a system—showing how the makers and administrators of tax laws in the United States have drifted, as it were, into uses and practices which long usage has made to appear almost as of self-evident validity, but which find no precedent in the experience or system of other countries, and no solid foundation in any correct economic philosophy.†

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\* Works of Alexander Hamilton (Lodge's edition), vol. vii, p. 328.

† Since the statement of Judge Swayne (above referred to) was made, a decision has been rendered by the Privy Council of Great Britain, in which the recognition of direct taxation and its method of incidence by British jurisprudence is taken for granted; for in concurrence with a decision rendered by the full bench of judges concerning an opinion of one of their members, wherein he says, in speaking of a point that had been raised, that a tax must be general in order to be a direct tax, they reject that view,

There were also two reasons and two points of view in the Hylton case on which the judgment of the court might have been predicated. One was that Hylton possessed one hundred and twenty-five carriages, which warranted the inference that they were hackney carriages, kept and used for hire, and that the tax levied on each carriage ultimately fell on the consumer and not on the owner (Hylton) himself; or, in other words, the tax in question was a tax on transportation, and, as such, capable of transference to the person carried, and therefore, when imposed on the carrier, was an indirect and not a direct tax. Another point is, that a tax on carriages has not the compulsory element which pertains to all direct taxes, as their ownership and use are optional, which is the special characteristic of all indirect taxes.

Substantially the same question involved in the carriage case came up again (in 1874) before the same court (*Springer vs. United States*, 12 Otto, 102 U. S. Reports, p. 856), when a citizen of Illinois resisted the payment of a national income tax on the ground that such a tax was a direct tax; and not being levied in the manner prescribed by the Constitution, was not legal and valid. From an economic point of view such a tax, as has been before shown, is and always has been regarded as a direct tax; and on the hearing the plaintiff adduced in support of his position the testimony, as found in their writings, of almost every acknowledged authority on political economy or finance in the English language—Adam Smith, Ricardo, Mill, Wayland, Brande, Say, Perry, as well as the *Encyclopædia Britannica* and almost every other cyclopædia or dictionary of English or American origin.\* The court, however, held as before, that under the definition of a direct tax, as expressed in the Constitution, the income tax was

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inasmuch as it “would deny the character of a direct tax to the income tax of this country—Great Britain—which is always spoken of as such, and is generally looked upon as a direct tax of the most obvious kind; and it would run counter to the common understanding of men on this subject, which is one main clew to the meaning of the Legislature.”

\* In all the debates in the British Parliament it is doubtful if any British statesman can be named who has ever spoken of an income tax as other than a direct tax. The same may be also affirmed of French authors and statesmen. The following

not direct but indirect, and accordingly that its imposition was not unconstitutional. The following was the exact language of the Court:

"Our conclusions are that direct taxes within the meaning of the Constitution are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff complains" (i. e., a direct tax) "is within the category of an excise or duty."

Whether warranted or not, the drift of public opinion in the United States has been, that the decision of its Supreme Court in the Springer case in 1874, and, to a certain extent, in all previous cases touching the constitutionality of an income tax, was made under the pressure of an apparent political necessity. Had the decision been to the

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citations of the opinions of various recognised authorities are illustrative:

"The taxes which it is intended should fall indifferently upon every species of revenue are capitation taxes."—*Adam Smith*.

James Mill, under the title of "*Direct taxes, which are designed to fall upon all sources of income*," says, "Assessed taxes, poll taxes, and *income taxes* are of this description."—*Elements of Political Economy*, p. 267.

J. R. McCulloch divides his work on Taxation into two parts: Part I, on direct Taxes, and Part II, on indirect taxes; and under the head of "Direct Taxes" he treats of "taxes on property and *income*."

Dr. Lieber, referring to the different modes of levying taxes, says: "The first way is direct—to determine from the statement of the parties concerned, or from official information, the net *income* of persons. This kind of taxes are called direct."—*Encyclopædia Americana*.

"Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who it is intended or desired should pay it. *Direct taxes* are either on *income* or expenditure. . . . Most taxes on expenditure are direct, being imposed not on the producer or seller of an article, but immediately on the consumer. . . . The window tax is a direct tax on expenditure, so are taxes on horses and carriages."—*John Stuart Mill, Political Economy*, vol. 4.

When Sir Robert Peel brought forward his plan for an income tax in 1842, he said: "*Indirect taxation* has reached its limits, and can no longer be relied on. My plan is this, to levy an income tax," etc.—*Parliamentary Debates*, lvi, 428; *Ann. Reg.*, 1842, 72, 73. And Lord John Russell said in reply: "To resort to the desperate measure of an income tax in such circumstances is nothing less than to proclaim to the world that your resources are exhausted, that indirect taxation has reached its limits," etc.—*Parliamentary Debates*, lvii, 86, 147; *Ann. Reg.*, 1842, 77, 79.

effect that the income tax was a direct tax, and any method of levying it other than that prescribed by the Constitution—i. e., according to population—was unconstitutional, the Government would have been forever practically deprived of an effective instrumentality for raising revenue which might be most desirable in cases of emergency. Immense sums which had been paid under protest as income taxes would also have been pressed for repayment in case the decision had been otherwise, to the serious embarrassment of the national Treasury.

In harmony with the above decisions, the United States Supreme Court has decided that neither taxes on distilled spirits (*United States vs. Singer*, 15 Wall., 111), nor succession duties on the devolution of title to real estate (*Scholey vs. Rew*, 23 Wall., 331), nor taxes on the notes of State banks (*Veazie Bank vs. Fenno*, 8 Wall., 533), nor taxes on the receipts of insurance companies from premiums and assessments (*Insurance Company vs. Soule*, 7 Wall., 433) are direct taxes; but that all such taxes are imposts and excises, and subject, therefore, to the requirement as to uniformity, but not subject to the requirement of apportionment.

Important, interesting, and instructive from a constitutional, legal, and economic point of view, as was the experience of the United States in respect to direct taxation, prior to 1894, the sequel of events and experience in respect to this question and its involved problems has been no less important and worthy of narration.

By an enactment of Congress, August 18, 1894, establishing an income tax for the United States, a tax of *two* per cent was imposed on the gains, profits, and income of persons derived from any kind of property, including rent and the growth and produce of lands, and profits made upon the sale of land if purchased within two years. Every element that could make real or personal property a source of value to an owner was taxed. An excise duty was also imposed upon income derived from any profession, trade, employment, or avocation. The tax upon persons generally was not upon their entire income, but on the excess over and above the sum of \$4,000. All persons having incomes of \$4,000 or under were exempt. The whole burden of the tax, it was estimated, would fall on less than two

per cent of the population of the country. That the Government practically conceded that such a feature of the act was pre-eminently class legislation is evident from the following extract from a statement made in a brief by the Attorney General of the United States: "Congress," he says, "has adopted as the *minimum* income for the purpose of taxation the limit of \$4,000. This limit may be said to divide the *upper* from the *lower middle class*, financially speaking, in the larger cities, or to divide the *middle class* from the wealthy in the country districts." \*

As might have been expected, the provisions of this enactment, which could not be fairly considered pertinent and relevant to a just and equitable system of income taxation, occasioned much dissatisfaction among business men and the financial authorities of the country generally; and measures were at once initiated to test before the proper legal tribunals—i. e., the courts of the United States—the constitutionality of the statute. The most important and immediate representatives of this action were the Farmers' Loan and Trust Company and the Continental Trust Company, of New York—two of the largest trust companies in the United States. It is also worthy of note in this connection that the above-named companies, before taking any steps to test the validity of the act in question, complied with all its provisions; no collector of internal revenue or any public officer of the United States having been made a party, or any injunction sought from the courts to restrain the collection of the tax.

The basis of action of the above-named parties, as represented by some of the most eminent members of the legal profession in the country,† was substantially as follows: Each of them, and a large number of other like organizations—insurance companies, saving banks, and trusts—hold as investments of capital stock, earnings, and profits, and as trustees for minors, widows, individuals, copartnerships, and corporations too numerous to mention, resident in the United States and elsewhere, large amounts of real estate,

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\* Brief on behalf of the United States (by Mr. Olney), p. 85.

† Messrs. Joseph H. Choate, Clarence A. Seward, William D. Guthrie, Benjamin H. Bristow, David Wilcox, and Charles Steele. For the United States, James C. Carter and Richard Olney, the Attorney General,

situated in the various States of the Federal Union, and amounting in aggregate value to hundreds of millions of dollars. The rents and income of this real estate, also annually amounting in the aggregate to large sums, are collected and received by the above-mentioned organizations, and held by them in their various fiduciary capacities.

The first point of importance under such a state of affairs to which attention is asked is, that taxes levied or laid by the Federal Government are recognised and admitted (in virtue of repeated decisions and assumptions of the United States Supreme Court) to be typical forms of *direct* taxation, and as such under a clear and carefully worded provision of the Federal Constitution must be apportioned among the several States according to their respective population.\* On this point, therefore, there could obviously be no legal contention.

It is now well recognised that this provision of the Constitution, after full discussion and careful wording on the part of its framers, was adopted in order to protect to the States, which in entering into union were surrendering to the prospective Federal Government so many sources of income, the power of direct taxation, and so preclude a combination of States from exacting tribute from other States.†

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\* "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers."—*Constitution of the United States, Article I, section 2.*

† "The founders anticipated that the expenditure of the States, their counties, cities, and towns, would chiefly be met by direct taxation on accumulated property, while they expected that those of the Federal Government would be for the most part by indirect taxes; and in order that the power of direct taxation of the General Government should not be exercised except on necessity, and when the necessity arose should be so exercised as to leave the States at liberty to discharge their respective obligations, and should not be so exercised unfairly and discriminated as to particular States or otherwise by a mere majority vote, possibly of those whose constituents were intentionally not subjected to any part of the burden, this qualified grant was made. Those who made it knew that the power to tax involved the power to destroy, and that the only security against the abuse of this power is found in the structure of the Government itself. In imposing a tax the Legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation,



The next point of contention in order of importance in the case as presented to the United States Supreme Court was, Did the provisions of the income-tax act of 1894, imposing a tax of two per cent upon the gains, profits, and income derived from all kinds of property—including rent and the gains and profits accruing from the growth, profits, or sale of land—involve and create a tax which must necessarily be deemed a direct tax on real estate (land), and which not being apportioned (levied) according to the provision of the Constitution render the entire act imposing an income tax unconstitutional and void?

The precise or original question involved, it was admitted, was one on which the Federal Government had really never been heard,\* and was first brought before the United States Supreme Court for a hearing and adjudication in April, 1895. On that occasion the court held that the provisions of the act of August 15, 1895, were unconstitutional, so far “as they purport to impose a tax on the rent or income of real estate.” It was, however, equally divided on the following questions, and expressed no opinion in regard to them:

(1) Whether the void provisions invalidated the whole act; (2) whether, as to the income from personal property as such, the act is unconstitutional as levying direct taxes; (3) whether any part of the tax, if not considered as a direct tax, is invalid for want of uniformity.

The court, early in its history, adopted the practice of requiring, if practicable, constitutional questions to be heard by a full court, in order that the judgment in such cases might, if possible, be the decision of the majority of the whole court. And as the court was not full, at the first hearing in April, and as four judges did not concur in the opinion then rendered, a rehearing was granted by the court in the month following (May 6th, 7th, 8th); in

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and they retained this security by providing that direct taxation and representation in the lower House of Congress should be adjusted on the same measure.”—*Chief-Justice Fuller*.

\* None of the previous decisions of the court “discussed the question whether a tax on the income of personalty is equivalent to a tax on that personalty; but all held real estate liable to direct taxation only so as to sustain a tax on the income of realty on the ground of being an excise or duty.”—*Chief-Justice Fuller*.



the announcement of which the Chief Justice remarked that "the importance to the Government of the new views of its taxing power can hardly be exaggerated."

In advocating the constitutionality and rightfulness of the provisions of the income tax of 1894, the then United States Attorney General, Hon. Richard Olney, on behalf of the Government, made in part the following argument:

"What is this" (contested) "tax in its true value and essence? It is an assessment upon the taxpayer on account of his money-spending power as shown by his revenue for the year preceding the assessment. It is not a property tax in any sense or of any sort. Yet this is the sort of tax which is called a tax on real estate for no other reason than that last year's rents form a part of the yardstick by which this year's money-spending capacity is measured! A greater error, I submit, could not easily be justified. My Lord Coke is quoted to the effect that a grant in fee of the profits of land passes the land itself. Other citations are always interesting, and state a rule of law which is indisputable and of universal acceptance. But what is their relevancy to the case in hand? They relate to grants taking effect in future—to grants taking effect from the date or delivery of the deed, or from the probate of the devise, and carrying all after-accruing rents as a matter of course. But what this case is concerned with is rents that have not only become due, but have actually been received by the landlord. Does any one pretend that rents thus received would pass by a grant of the estate that has yielded them? Of course not, and why? Because, by falling due and being collected, they have become severed from the realty, and have become personal property—money in the landlord's pocket, like any other money. Nothing is gained, however, by belittling or evading an argument, and I have no intention of doing either. The strength of the plaintiff's claim is in the proposition that the value of land is in its use; that rents are the pecuniary equivalent of the use, and that, therefore, to tax rents is in substance and effect to tax the land itself. This is what may be called a fetching proposition. How much truth is there in it, and how much of applicability to the present case? There is this much of truth in it: that a tax upon rents to become due—to accrue in the future—may well be deemed a tax on the

estate itself. Such accruing rents are like growing crops, an inseparable part of the land, and whatever is a charge upon them is necessarily a charge upon the land. But the proposition stated has no application whatever to the present case, because the tax it has to do with is a tax in respect to rents already due and collected, and in all probability either spent or transformed into other tangible property. How can a tax in respect to such rents be said to be a tax upon the real estate producing them? When they become due and are paid, just as when crops are harvested; when either process is complete, a new and distinct item of property comes into existence, and the landlord's property realizes a corresponding accretion."

In rejoinder the counsel for the appellants maintained that under the income-tax enactment in question (i. e., of August 28, 1894) a tax was imposed upon income "derived not merely from business, but also expressly upon that derived from property, and therefore directly upon the property producing the income, whether real or personal." Notably is this the case with a tax upon "rents" and the "growth and produce of land." It taxes every element of value of the land which the owner can realize from third parties. It must be clear that a tax upon what gives the land value is a tax upon the land itself. In the words of Hamilton, "What in fact is property but a fiction without the beneficial use of it?" In many cases, indeed, the income or annuity is the property itself. As one of the justices said in the *Hylton* case, "Land, independently of its produce, is of no value." It scarcely needs argument to establish that anything which affects every element that gives an article its value, in the eye of the law, affects directly the article itself. In illustration of this many decisions, mainly of the United States Supreme Court, were cited, of which the following are examples:

In *Brown vs. Maryland*, 12 Wheaton, it was held by the United States Court that a tax on the occupation of an importer is the same as a tax on imports, and was therefore void.

In *Weston vs. Charleston*, 2 Peters, it was held that a tax upon the income of United States securities was a tax upon the securities themselves, and equally inadmissible.

In *Almy vs. California*, 24 Howard, it was held that a

duty on a bill of lading was the same thing as a duty on the article which it represents.

In *Cook vs. Pennsylvania*, 97 United States, it was held that a tax upon the amount of sales of goods made by an auctioneer was a tax upon the goods sold.

In *Railroad Company vs. Jackson*, 7 Wallace, it was held that a tax upon the interest payable upon bonds was a tax not upon the debtor, but upon the security, the bonds.

In *Philadelphia Steamship Company vs. Pennsylvania*, 122 United States, it was held that a tax upon the income received from interstate commerce was a tax upon the commerce itself, and equally unauthorized.

"If a man seized of lands in fee by his deed granteth to another the profit of those lands to have and to hold to him and his heires, the whole land itselfe doth passe; *for what is the land but the profits thereon?*" (Coke upon Littleton, the accepted rule of law in every court in English Christendom.)

A devise of the interest or of the rents and profits is a devise of the thing itself out of which that interest on those rents and profits may issue (*Patterson vs. Ellis*, 11 Wendal).

It seems clear, therefore, that the weight of judicial opinion as expressed in the judgments of the highest courts, both in the United States and England, was to the effect that the tax imposed under the United States act of August, 1894, on the income from the use, profits, and sales of land was a direct tax, and, not being apportioned in accordance with a strict provision of the Federal Constitution in respect to the levy and collection of said tax, was necessarily unconstitutional and void.\*

Apart from the leading element in this celebrated case, and on which the final decision of the court was mainly based, was that provisions in the act of 1894 establishing

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\* The following rejoinder by one of the counsel for the applicants (Mr. Choate) to a portion of the argument made by the Attorney General (Mr. Olney), and before cited, is pertinent and instructive, as respects the much-vexed question as to the *situs* of property for the purpose of tax administration:

"The Attorney General says, 'When a man has got the money in his pocket it is no longer rent.' One thing I would say about that is, that if you are going after rent as money, the tax is on personal property, and should be apportioned. But the answer

an income tax, being in the nature of direct taxation, and the same being not assessed in accordance with the requirements of the Federal Constitution, were void in effect. The constitutionality of the entire act was also questioned on the ground that it violated the constitutional requirements that "all duties, imposts, and excises shall be uniform throughout the United States." Thus, for example, it taxed the income of certain companies and associations, "no matter how created or organized," at a higher rate than the income of individuals and partnerships derived from precisely similar property; and denied to individuals deriving their income from shares in certain corporations and associations the benefit of the exemption of \$4,000 granted to all other persons interested in similar property and business, and the like. These features of the act of 1894, although constituting most important and instructive contributions to the general subject of "taxation," are not, however, so pertinent to the immediate subject under consideration as to require at present any extended discussion.

**CONCLUSION.**—As the result of the hearing and discussions involving the constitutionality of the income-tax statute of August 28, 1894, the United States Supreme Court, a majority of its members concurring, gave judgment as follows:

1. WE ADHERE TO THE OPINION ALREADY ANNOUNCED, THAT TAXES ON REAL ESTATE BEING INDISPUTABLY DIRECT

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is that the tax does not go after the rent as money in the taxpayer's pocket. The act of 1894 (section 27) specifies the rents as a cardinal part and element of this income return, and every man who goes up to make return has to state under oath what rent he got last year. This fiction—this difference between the name and the thing, between the substance and the shadow, urged by the Attorney General—is that, though you can not tax rent, you can tax the money in the owner's pocket received from rent. If there is one factitious argument, one pretence of a reason, one attempt to make a distinction without a difference that this court has uniformly stamped upon with all its might, it is just that. The court has repeatedly decided that such an argument is wholly unsound. What did the court mean, in *Brown vs. Maryland*, when it held that a tax on the occupation of an importer is the same as a tax on imports and is therefore void? It is the source, the substance, that the act strikes at, that the court always looks to, and always has looked to, in any form and case that has ever come before it until now."

TAXES, TAXES ON THE RENTS OR INCOME OF REAL ESTATE ARE EQUALLY DIRECT TAXES.

2. WE ARE OF THE OPINION THAT TAXES ON PERSONAL PROPERTY, OR ON THE INCOME OF PERSONAL PROPERTY, ARE LIKEWISE DIRECT TAXES.

3. THE TAX IMPOSED BY SECTIONS TWENTY-SEVEN TO THIRTY-SEVEN, INCLUSIVE, OF THE ACT OF 1894, SO FAR AS IT FALLS ON THE INCOME OF REAL ESTATE AND OF PERSONAL PROPERTY, BEING A DIRECT TAX WITHIN THE MEANING OF THE CONSTITUTION, IS THEREFORE UNCONSTITUTIONAL AND VOID, BECAUSE NOT APPORTIONED ACCORDING TO REPRESENTATION. ALL THOSE SECTIONS, CONSTITUTING ONE ENTIRE SCHEME OF TAXATION, ARE NECESSARILY INVALID.

A brief word more is desirable to complete the record of the curious and instructive experience of the United States in respect to the enactment and administration of direct taxation.

Theoretically an almost ideal system, especially if made universal in its incidence and exclusive of all indirect taxes, its application under a dual form of government, such as exists in the United States, with a practical denial of resort to arbitrary action in collection, such as exists in all despotic governments, and an accepted rule that neither the "nation" nor the forty-five "States" shall tax an instrumentality of the other, will be necessarily most perplexing. These and other like circumstances, more especially the inequalities and inefficiencies contingent on the act of 1861, therefore, render it almost certain that direct taxation will not hereafter be resorted to by the Federal Government until all other means of relief for its treasury have been exhausted. With the decision of the United States Supreme Court in 1896 against the taxation of land incomes remaining unimpaired, as it probably will be unless the Federal Constitution is practically reconstructed, the enactment by Congress of another income tax which will not reach more than half the incomes designed to be reached, will probably not be attempted. When it is also considered that it will be an impossibility to separate the part of incomes of great corporations which they derive from real estate, when they necessarily use real estate in common with other property in order to derive any income,

the enormous expense and interminable litigation contingent on any attempt on the part of the Government to enforce such a law will be almost beyond estimate.

“**REAL**” AND **PERSONAL TAXES**.—Direct taxes are also spoken of, and in fact classified, as *real* and *personal* taxes. “*Real*” taxes (Latin *res*, thing), or taxes on realty, as is the general expression, are taxes on property—generally on things naturally characterized by immobility—without reference to the pecuniary condition of the owner, and hence without taking his debts into account. A tax on land or real estate—houses and land—is a typical tax on realty; and a tax legally assessed upon such property rests, or is a lien upon it, irrespective of its ownership.

Business taxes are regarded as real taxes, as they are taxes on pursuits or occupations rather than on persons. The same is true of taxes on capital and the rental value of land or buildings.\* The restriction on the levy of direct taxation imposed by the Constitution of the United States on the Federal Government does not apply to the States.

Personal taxes are taxes on persons. A poll or “**capitation**” or “**head**” tax, implying a uniform payment from every poll or head of some portion or all the population of the State, would be a typical personal tax. Strictly speaking, therefore, a personal tax can be no other than a poll tax levied under the above conditions. What are usually called personal taxes are taxes assessed or rated to a person, not as in the case of a poll tax because he is a person or citizen, but in virtue of the movable property—furniture, clothing, vessels, carriages, animals, money at interest, stocks in corporations, bonds, or negotiable instruments and the like belonging to him. It is the individual that the law regards as the objective rather than his personal property—which may not be tangible or visible—on enforcing the tax; the property being resorted to for the purpose of ascertaining the amount of tax which its owner should pay. An income tax is regarded as a personal tax because it is assessed on the income that gathers about a person irrespective of its source—rents, interest, profits,

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\* “Real estate for the purpose of taxation shall include all lands within this State, and all buildings or other things erected on or affixed to the same.”—*Statutes of Massachusetts*.

salaries, and the like. A tax on land is a tax on realty, while a tax on a mortgage is a personal tax, which is equivalent to affirming that the former is a *thing*, while the latter is only the representation or shadow of the thing.

In levying taxes on realty the owner, as a rule, is not allowed to offset or reduce its valuation by the amount of his outstanding indebtedness; but in the case of the taxation of personal property such an offset is generally permitted, on the ground that a man should be taxed only upon what he *owns* and not upon what he *owes*; and even when not allowed by law, the circumstance of indebtedness is almost always taken advantage of by persons assessed, for reducing valuation in making returns to the tax officials of the value of their property. In assessing an income tax a deduction is allowed for interest paid on mortgages, and such business expenses as lessen income. Personal expenses, as house rent, cost of living, and the like, can not, on the other hand, be properly deducted from income before it is taxed, because income is sought for and exists for the purpose of defraying such expenditures. By the income-tax law of the United States, enacted in 1865, and also in 1894, deductions were allowed from the amount of taxable income, of all taxes paid within the year, of all interest paid on indebtedness, and the rent or rental value of any homestead actually occupied by the taxpayer.

One of the most curious features of recent tax experiences in the United States has been the extent to which this practice, or right of reducing valuations of personal property for taxation by debts, has been made the opportunity for evading taxation. Thus, by the very structure of the Federal Government, its various instrumentalities, as heretofore explained,\* are necessarily exempted from all taxation by the States of the Federal Union. Recognising this, it has been the habit of individuals to effect *credit* purchases to a greater or less amount of United States securities a short time previous to the time fixed for tax returns or valuation, and then offsetting *the debts* thus incurred against valuation, evade the taxation on their per-

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\* See Chapters XI and XII.



sonal property to which they would otherwise be subjected.\* And for such moral wrong there would appear to be no legal remedy on the part of the State, except by the commission of a greater wrong—namely, the prohibition of the offsetting of all debts in tax valuations; or, what is the same thing, the imposing of a discriminating burden of taxation upon persons who, for any cause, may be in debt—a denial of equity which public sentiment in every free country will not long tolerate. A further proof and illustration of this averment may be found in the fact that years ago the Constitution of Ohio provided that credits, or evidences of indebtedness, should be subject to taxation by a uniform rule; and the Supreme Court of Ohio subsequently decided that this did not allow any offset of debts owed against credits owned. But popular opinion was so adverse that by common consent this clause of the Constitution, as interpreted by the court, was entirely disregarded in making up tax valuations.

In old English history the division of property into *real* and *personal* was wholly unknown; and all laws regulating this species of property, with a view to taxation or inheritance, are of comparatively modern origin.† It is also in-

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\* When the Federal Government effected in November, 1894, a loan for \$50,000,000, a premium was paid on no inconsiderable amount for the privilege of purchase, or investment, so large as to net to the purchaser an abnormally low rate of interest—2.5 per centum. The explanation of this action was that, apart from the recognised value of an unquestionable security, the investment carried with it an exemption from a national income tax of two per cent, as well as from State and municipal taxation; so that the rate of interest accruing to the purchaser was not as low as it might have seemed to be, and by the holders and managers of trust properties was generally regarded as satisfactory.

† The first authorization of local taxation in England was for the maintenance of the poor, and occurred in the reign of Elizabeth. At that time it seems to have been assumed that there was no personal property in the kingdom capable of being assessed, and that real property was alone valuable property. Hence it was enacted (43 Elizabeth, cap. 2) that overseers should be appointed who were to raise, by taxation of every inhabitant, parson, "and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or salable underwoods in the said parish," moneys for the relief of the poor. No mention was made of personal property, and it is probable that every kind of property then known was mentioned in the act. When fresh burdens were necessary the principle adopted by the act of Elizabeth was con-



interesting to note that probably full one fourth of all the so-called personal property of this country—namely, all railroad, steamship, telegraph, telephone securities—did not have an existence fifty years ago.

As is the case with direct and indirect taxes, the line of demarcation between real and personal property, and consequently between real and personal taxes, is very indefinite, and some very nice and curious points in connection therewith have been established by usages, or court decisions. Thus an apple on the tree is real estate, but when fallen upon the ground it becomes personal property. Running water accumulated in a pond is real estate, though the owner is not permitted to invest it with the peculiar attribute of real estate—namely, stability—by permanently arresting its flow. In some States the engines, water wheels, shafting, and even belts of factories are real estate, while looms and lathes are personal property. Stone in the quarry is real estate, but when thrown out by a blast and made ready for market it becomes personal property. Hop-poles, not standing, have been decided to be real estate, but wood cut and corded for sale is personal property. A statue exhibited for sale in a workshop is personal property, but when placed upon a permanent foundation (although not fastened to it), as an ornament in front of a house, has been held to be a part of the realty. Chairs in a theatre and screwed to the floor, as they can not stand alone, are considered a part of the realty; but gas fixtures and mirrors, made to order for the house, and attached to the freehold, but removable without injury thereto, are not deemed a part of the realty. Before emancipation in the United States, slaves, who by the Federal Constitution were recognised as persons, were in several of the States declared by law to be real estate; \* and in one State of the Union, Wisconsin, the one species of property which is especially typical of mobility, and is of no value apart from its capability of motion, namely, the rolling stock of railroads,

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tinued, without much inquiry or opposition, and owners of personalty have remained exempt from taxation, although personal property has gone on increasing until its value has become much greater than all the real property of the kingdom.

\* In American colonial days slaves were regarded as belonging to the land, and figured in tax valuations as real property.

has been by law made real estate. Shares in the national debt of France, as well as stock in the Bank of France—instrumentalities which in the United States would be regarded as personal property in its most typical form—may by French law be made real estate, and as such be administered on.

Some years ago the following curious experience occurred in one of the New England States: A person rented a farm, and on the expiration of his lease attempted to remove from the estate the manure which had accumulated during his holding, assuming that he had the right to it as personal property. The owner of the farm, on the other hand, forbade the removal of the manure, on the ground that it was real estate, and so a part of the farm. The case found its way into the courts, and on its trial the lessee and defendant, who appeared for himself, attempted to substantiate the legality of his proceedings in the following manner: Addressing the judge after the facts in the case had been established, he asked, "Was the hay in the barn personal property?" *Judge*: "Certainly." *Lessee*: "Were the horses and cattle personal property?" *Judge*: "Without dispute." *Lessee*: "Then will your Honour please to tell me how personal property can eat personal property and produce (dung) real estate?" The decision was nevertheless in favour of the owner of the farm, or the plaintiff. Subsequently the courts of New York decided that manure accumulated in connection with a livery stable, not being an agricultural product pertaining to a farm, was not real estate but personal property.

In a case in the State of Tennessee, where a person who had entered a neighbour's field and removed corn on the stalk was prosecuted for larceny, the court held that the offence was not larceny, which is the unlawful taking and carrying away of personal property, but trespass, inasmuch as the corn not severed from the ground was real estate, but would have been larceny if the corn had been gathered or disconnected from the ground previous to its taking. Thereupon a bill was introduced into the Legislature of Tennessee to make it a felony to steal corn from a field under any circumstances.

From these illustrations it seems obvious that the distinction between real and personal property and real and

personal taxes is, to a very great extent, an artificial and not a natural distinction.

The following are some of the other terms used to designate particular forms of taxation, the meaning and technical application of which may not be readily apparent:

A *franchise tax* is a tax on a franchise, or on a right granted by a State to a corporation or association to exercise certain privileges. In fact, a franchise is a *privilege*, and in most cases it is an exclusive privilege, and has an actual value largely disproportionate to the amount of capital invested by the company or corporation upon which it has been conferred.\* It has been held by the courts that a franchise tax is not a tax on capital or on real estate, but on privilege, and does not exclude additional taxation on any property covered by the franchise.

The terms *imposts* and "*customs*" (Latin "*consuetudines*") are generally understood to mean indirect taxes on the importation of commodities, while the term *duty* is more properly applied to a tax upon exports.

The origin of all these terms is obscure and involves some interesting features in English history. It appears certain that they were in the first instance applied to exactions on trade generally, and not, as was finally the case, on imports and exports exclusively, and were in use before indirect taxes on personal property were recognised in England. At the outset and for a long period they were also not

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\* The following is a case in point, derived from actual experience: A street railway company in a city of the United States reported the gross earnings of the corporation for 1891 at \$1,188,000. Its net earnings were \$400,000, or nearly six per cent on a capitalization of \$7,000,000. Its city property tax was only \$11,000, or \$2.10 on \$500,000. It is evident, therefore, that the value of the capital of this corporation was due largely to the value of its franchise.

The value of a franchise is an eminently proper subject for taxation, though it is not commonly so regarded. The Supreme Court of Pennsylvania, in a recent case (1894), has held that under the laws of that State it was proper and lawful in ascertaining the actual value of the capital stock of a corporation (Susquehanna and Schuylkill Railroad Company) to take into consideration, as affecting that value, the franchises of the company. Franchises conferred by Congress upon a corporation created by it, to be exercised within a State, can not be subject to taxation by the State without the consent of Congress.—*California vs. Central Pacific Railroad Company*.

regarded in the light of taxes, but rather as dues personal to the sovereign, which he had the right to regulate and collect independent of any statute, and which carried with it the further right to restrain at pleasure the import or export of any commodity.\* Thus, until the reign of Edward II (1272–1307) the right to tax the export of wool was exclusively a royal privilege; and the enactment of a statute by Parliament in 1275, limiting the amount that the king could take in respect to the export of wool, skins, and leather—but not denying the privilege—is regarded as the first legal foundation in England of the customs revenue. The controversy between the king and Parliament over customs duties went on, however, with varying phases until finally settled in 1682; and from these circumstances, and also from the fact that customs and duties are unseen by those who finally bear their burden because they are embodied in the prices of commodities, has possibly come about the curious idea that tariffs, or taxes on imports, are not taxes on any one or are any burden on property, but rather some sort of a business contrivance for the raising of revenue, and, if they are taxes at all, then that the foreigner pays them.

The term *impost* is a general expression for any tax, duty, or tribute, but is seldom now applied to any but indirect taxes on imports.

The term *excise*, though used in the Constitution of the United States, is now almost entirely restricted in use to the tax system of Great Britain; and even there has acquired a far different meaning and application from what it possessed originally. Thus the term was first applied in

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\* It is a curious fact that the old idea that imposts and customs, or the right to impose exactions on trade, were, when first imposed, not regarded in the light of taxes but as dues personal to the sovereign, which he had the right to regulate and collect independent of any statute, has recently found reassertion and indorsement in the United States Senate by a leading member of that body from New England, that he did not regard the levying of imposts or customs dues on imported commodities as in the nature of taxes; for, if such levies on trade are not taxes, they are simply exactions of a despotic form of government, represented immaterially either by one man or a collection of men, and for whom or for which no rightful claim of representing or being a government by the people or for the people can be preferred.

England to taxes on manufactured commodities produced and consumed in the kingdom, as beer, cider, soap, glass, paper, and the like, and in contradistinction to duties or customs on commodities of foreign manufacture and importation; and this distinction is still officially recognised in the fact that special care has always been taken in all British legislation on this subject to make the excise tax as nearly equal as possible to the customs imposed on the same kind of imported commodities. The term is supposed to find its origin also in the circumstance that it was originally the practice to cut off, or "excise," portions of the goods assessed, and take them away in payment of the tax in kind. The first attempt to impose an excise tax in England was in 1525, and failed, as both Houses of Parliament concurred in opinion that it was unconstitutional. After the Restoration, or under Charles II, the attempt was successfully renewed, and the taxes under it were very curiously divided into two classes, and the receipts from the same made personal to the crown—namely, the *hereditary* excise, so called because granted to the crown forever in consideration or recompense for the abandonment by the crown of certain perquisites and privileges; and the *temporary* excise, the receipts of which were only granted to the sovereign for life. The tax was, however, always unpopular in England, being regarded as contrary to the spirit and principles of a just government, and on the accession of William and Mary it was greatly modified and reduced; and it is somewhat curious that a term having such an origin and history should have found a place in the Federal Constitution and be thus recognised as a legitimate form of taxation under a free government. In Great Britain at the present time the only commodities on which taxes designated as *excise* are assessed are spirits, malt, fermented liquors, and chicory, or other substitutes for coffee. But in addition the British system classifies under the head of *excise* its taxes on railways and a few other minor subjects.

The late United States Justice Miller defined an excise tax as "one which is assessed upon some article of property or money or something which is exhausted in the use. It is one which from its essence and nature must be paid in fact by the buyer, or the last man who buys or uses the

property, because, whoever has it at the time when the tax is levied upon it adds that amount to the selling price when he comes to dispose of it until the property is consumed. It is a tax upon consumption." \*

In the United States all Federal taxes that are not levied under the tariff and navigation laws are classified under the general designation of "internal revenue taxes."

The term *toll*, formerly in extensive use, and signifying duties on imports and exports, is now nearly obsolete, and restricted almost exclusively in meaning to the charges for permission to pass over bridges, ferries, and roads (turn-pikes) owned by the parties imposing them. The courts have held that railroad fares can not be regarded as tolls.

A word in very common use in English history, especially when reference is made to fiscal topics, is that of *subsidy*; but its former and present signification are very different. Under the earlier English kings, when the inadequacy of the hereditary or peculiar revenues of the crown to defray its expenditures compelled the monarch to ask pecuniary aid of his subjects, the grants that were made were known as "*tenths*," "*fifteenths*," or the like, according as the exaction of such percentages of certain properties were authorized, and also as "subsidies" and "benevolences." The peculiarity of all such grants was that they were always special and extraordinary, and had no place in any regular system of taxation. Thus, of the reign of Henry VIII it is recorded that Parliament granted subsidies occasionally, but the king, having found a readier way of obtaining money, did not need them—the readier way having been the confiscation of all the property of the religious houses, which included more than half of all the land of the kingdom; and of Elizabeth, that during the forty-five years of her reign Parliament granted twenty subsidies and thirty-nine fifteenths, the balance of needed supplies being obtained from crown lands—as the duchy of Lancaster—and other hereditary revenues. Under the

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\* Lectures on the Constitution of the United States, p. 238. "What is the natural and common or technical or appropriate meaning of the words duty and excise it is not easy to ascertain. They present no clear and precise ideas to the mind. Different persons will annex different significations to the terms."—*Patterson, J., Hylton vs. U. S., 3 Dallas, 171, 176.*

Commonwealth regular taxes on lands and other forms of property were for the first time instituted in England, and these proved so productive that the old methods of percentages, subsidies, and benevolences were discontinued, and with their nomenclature disappeared from English fiscal history.

At the present time the term *subsidy*, in place of designating as formerly a grant obtained by the Government from private interests, has come to mean a grant obtained from the Government in aid of private enterprises which it is claimed should be encouraged by the state in the interest of the general public, as, for example, the fostering of shipbuilding and ship-using, and the cultivation and manufacture of certain commodities. But this modern use of the word "subsidy" can not, it is said, be referred back to any earlier period than the year 1840.

Of the many other terms and words used in connection with the subject of taxation, there are very few that seem to require special explanation, and the majority of these, although formerly in extensive use, have now become obsolete and passed into history—as, for example, *gabelle*, the term given in France to the tax on salt; *corvée*, a compulsory contribution of labour; and *taille*, or *taillage*, a tax on the supposed profits of agriculturists, and the like. The characteristic of almost all modern *tax* words or terms is indefiniteness; and probably in no other department of knowledge is there such a lack of exactness in respect to definitions. This to a student may seem at first to be a factor of no little embarrassment, and as assimilating him to the condition of the man who couldn't see the forest because of the multitude of trees; but with the exception of the definitions of *tax* and *taxation*, this condition of affairs really constitutes no obstacle in the way of clearly reasoning and determining as to what should be the fundamental principles of taxation.

## CHAPTER XVII.

### THE EXISTING METHODS OF TAXATION.

#### PART I.

**SUBJECTS OF TAXATION.**—The subjects of taxation, to use a happy generalization of Justice Field, of the United States Supreme Court (Foreign-held Bond Case, 15 Wallace), “are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, licenses, or direct, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them taxation may be exercised in a great variety of ways.”

With this postulate we are legitimately led up to the consideration of the ways or methods by which the State or Government, in virtue of its sovereignty, and on the ground of necessity, and solely for its support, taxes or compels contributions from the three above-enumerated subjects, for the purpose of defraying its expenditures.

**APPORTIONMENT OF TAXATION.**—This department of the subject of taxation, while the most practical and therefore the most interesting, is at the same time the one most obscure, and the one about which there is the most striking difference of opinion among writers on economic and fiscal subjects. The four maxims or canons laid down by Adam Smith in his *Wealth of Nations*, by reason, as he claims, of their eminent justice and equality, have obtained such world-wide celebrity that they are almost always referred to as of unquestionable authority in all discussions of this subject, and have been thus characterized by an eminent French student and writer (M. Ménier) on taxation: “When a legislator,” he says, “brings forward a new scheme for taxation, he is always careful to say that it is *not* in contradiction with even one of these rules; and at



the same time he never fails to invoke them as authority during a debate, even when he is actually scheming to transgress them."

These rules are four in number, and are as follows:

1. "The subjects of every state ought to contribute to the support of the Government, as nearly as possible, in proportion to their respective abilities—that is, in proportion to the revenue which they respectively enjoy under the protection of the state." In the observation or neglect of this maxim consists what is called the "equality or inequality of taxation."
2. "The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person. The certainty of what each individual ought to pay is, in taxation, of so great importance that a very considerable degree of inequality (I believe, from the experience of all nations) is not near so great an evil as a very small degree of uncertainty."
3. "Every tax ought to be levied at the time and in the manner in which it is most likely to be convenient for the contributor to pay it."
4. "Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state."

But although almost universally accepted as the embodiment of the highest wisdom, the above four maxims or canons of Adam Smith have been and are, nevertheless, open to some criticism. In the first place, they are so general in their nature and so lacking in any precise rule or test for application, that they stand in the light of aphorisms; somewhat as the maxims "Honesty is the best policy," "Never put off till to-morrow what can be done to-day," etc., to which all respect is always given, except the desirable one of practical use in actual cases. In fact, the originators of the very worst forms of taxation now existing might and probably would plead that their methods or practices were based on the ideas of Adam Smith, or were as near in conformity to them as was possible under the existing circumstances. Again, the first maxim or canon embodies two propositions antagonistic to each other, and one of which can hardly be considered correct; namely,

that every citizen should pay taxes for the support of the Government in proportion to his ability. For if, as almost all authorities are now agreed, taxes are the compensation which persons or property pay to the state for protection, then it of necessity follows that where there is no protection, ability is no just guide for assessment. "Where there is no protection," said Judge Story (in the case of *United States vs. Rice*, 4 Wheaton, 276), "there can be no claim to allegiance or obedience." And that Adam Smith did not intend to have his first proposition fully accepted would seem evident from the circumstance that he added to it, and qualified it with these other words, "that is, in proportion to the revenue which they [the citizens] respectively enjoy under the protection of the state." Montesquieu, who wrote at an earlier date, also enunciated even more clearly this common-sense and equitable principle, when he said (see *Spirit of the Laws*) that "*the public revenues ought not to be measured by the people's abilities to give, but by what they ought to give.*" "And what they ought to give," as has been remarked by another writer, "can, of course, be only measured by the benefit they are to derive."

**DISCRIMINATING TAXATION.**—The proposition that "the subjects of every state ought to contribute to the support of the Government in proportion to their respective abilities" embodies also and inferentially favours the policy of discriminating taxation, and finds popular expression and justification in the assertion that the rich man needs more protection from the state than the poor man, has more interests to be guarded, and it is therefore right that he should pay more in proportion to his fortune. "It is just," says Sismondi, the Italian economist, "that all should support the Government in return for the protection it gives to their persons and properties, in proportion to the advantages society guarantees to them, and the expenses which it incurs on their account." But the question is pertinent, to whom or to what class of its members does society afford the most protection or render the most service? Is there any standard by which such proportionality can be even approximately determined? To these questions Mr. John Stuart Mill has made the following answer:

"It can not be admitted," he says, "that to be protected in the ownership of ten times as much property is to be ten times as much protected. Whether the labour and expense of the protection, or the feelings of the protected person, or any other definite thing be made the standard, there is no such proportion as the one supposed, nor any other definable proportion. If we wanted to estimate the degrees of benefit which different persons derive from the protection of Government, we should have to consider who would suffer most if that protection were withdrawn; to which question, if any answer could be made, it must be that those would suffer most who were weakest in mind or body, either by nature or by position. Indeed, such persons would almost infallibly be slaves. If there were any justice, therefore, in the theory of justice under consideration, those who are the least capable of helping or defending themselves, being those to whom the protection of Government is the most indispensable, ought to pay the greatest share of its price; the reverse of the true idea of distributive justice, which consists not in imitating but in redressing the inequalities and wrongs of Nature. Government must be regarded as so pre-eminently a concern of all that to determine who are most interested in it is of no real importance. If a person or class of persons receive so small a share of its benefit as make it necessary to raise the question, there is something else than taxation which is amiss, and the thing to be done is to remedy the defect instead of recognising it and making it a ground for demanding less taxes."

M. Ménier, of France, widely known as a manufacturer of chocolate, but who has shown himself to be an economist of repute and a most valuable member of the French Chamber of Deputies, in a comprehensive treatise on taxation (*L'Impôt sur le Capital*, Paris, 1874; English translation, London, 1880) re-enforces the conclusions of Mr. Mill respecting the popular theory of discriminating taxation by different though not less forcible arguments and illustrations, taking as a text the following remark of M. Léon Faucher, another distinguished French writer on economic subjects: "It seems just that he who, thanks to his talents, to his property, or his capital, procures for himself and his family the enjoyments of luxury should pay

to the state a tribute proportionately more considerable than he who has only the produce of his daily labour to nourish and bring up his family." "To those," says M. Ménier, "who do not reflect, nothing seems more simple than this proposition. A minimum of wants is spared taxation. In proportion as income increases the tax increases. Let us see the consequences.

"A principle is or is not. A principle recognised as true ought never to be given up, whatever may be its apparent dangers. Once admitted, it must be submitted to, followed out to the end, and its consequences accepted. If by following out its consequences we perceive that we are getting at the absurd, we must return to the principle, and subject it again to the touch of observation. There are many who content themselves with stopping halfway, not daring to advance, and afraid to turn back to discuss the principle on which they have long relied. They are the inventors of compromises, who adjourn questions instead of solving them.

"But taxation, it is claimed, may be 'wisely progressive.' I know no more concerning a 'wise progression' than I do about a 'wise addition' or a 'wise multiplication.' A progression is or it is not. If it is insignificant, then it is a delusion. The inequality it aims at destroying subsists intact. If a true progression in taxation is established, here are the results we obtain: We will suppose, for example, that the tax ought to be trebled when the income is doubled; then a tax of 10 francs on 100 francs of income would rise to 200 francs on 2,000 francs, to 600 francs on 4,000 francs, to 1,800 francs on 8,000 francs, to 5,400 francs on 16,000 francs, to 16,200 francs on 32,000 francs, to 48,600 francs on 64,000 francs, and to 145,000 francs on 128,000 francs. I conclude that the principle that ends in such a consequence can only be false. What! the tax would one day exceed my fortune! I should be the debtor of the fiscal system that had absorbed more than my revenue. Then it would be for my interest not to augment it! I shall have accumulated only for the treasury, and the more I acquire the more rapidly I shall be despoiled. . . . That system may suit Utopians and retrograde people who completely absorb the individual in the state, but it will not suit those who, relying on facts, think

the greatness and wealth of the state ought to proceed from the development of individuals. It may suit those who seek equality at the basis, but not those who seek equality at the summit. The theory of progressive taxation is a vestige of the old prejudice that regarded wealth as an evil, as a sort of theft from the rest of the country, and that it would be equitable to make the rich man atone or make reparation for the possession of his fortune and his pleasures. In warlike civilizations, where wealth was based on violence, it is not difficult to understand the legitimacy of this prejudice; but it finds no warrant in our industrial civilization, where all wealth, to be legitimate, must be based on the appropriation of natural agents to our wants. But the partisans of a wise progression in taxation have found means of escaping from the absurdity of the above consequence—namely, confiscation. They propose that above a certain figure the progression shall stop. Under such a system they would favour him who has but little money; but they would favour still more him whose wealth exceeds a certain limit. If you have £4,000 a year, you pay the maximum of the progression; if you have more than £4,000, the progression vanishes. A principle which ends in such consequences does not exist.” \*

M. MÉNIER'S RULES.—To establish a system of taxation which will be equitable and effective without involving the principle of progressive or discriminating taxes, M. Ménier regards the following constructive rules as fundamental:

1. Taxation should never be laid on circulating capital, “since every tax that obstructs circulation impedes production in a geometrical ratio.” 2. Taxation should be levied on the commodity; never on persons. 3. Taxes should never impede the liberty of labour. 4. Every tax ought to be levied as cheaply as possible. 5. There should be but one sole and single tax—namely, on *fixed capital*. †

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\* See also the destructive criticism in Say, *Les solutions démocratiques de la question des impôts*. Paris, 1886.

† M. Ménier defines fixed capital as every utility of which the product does not change the identity, as useful machines, instruments of trade, profitable buildings, improvements of land, and the like. Circulating capital, on the other hand, produces utility only by being transformed. It is represented by three

THE TRUE MEASURE OF THE BURDEN OF TAXATION ON PRODUCTION.—In addition to the maxims, or canons, proposed by Adam Smith, another one, first pointed out by Mr. Edward Atkinson, of Massachusetts, is worthy of being added, and may even be regarded in the light of a fundamental principle; and that is, *that the burden or injurious effect of a tax on production or exchange is not to be measured by the ratio which the tax may bear to the gross value of the subject of taxation, but rather by the proportion which the tax bears to the profit which might normally or naturally result from undertaking a certain line of industry or product.* To practically illustrate this, let us take an example. Let us suppose two men, A and B, to start shops for the manufacture of machinery, each with a capital of \$20,000, and that each in his operations expends \$20,000 for coal and iron, \$40,000 in wages, and \$4,000 for transportation of the raw materials to the shops for manufacture. The total cost of the annual product of each shop will then be \$64,000, or a little more than three times the capital; and a sale of their respective products, at the net price of \$66,000, would yield the owners \$2,000, or ten per cent profit. Now, suppose further that under such conditions A has a tax imposed on him of three and an eighth per cent upon the value of his product; it may be a customs or excise tax, or an increased rate of railroad freight. This amounts to \$2,000 on the \$64,000 of product—no excessive burden, it may be said, and only requiring A to sell his \$66,000 for \$2,000 additional. But suppose A can not get this \$2,000 additional; and he certainly can not if the other man, B, is exempt from this three-and-an-eighth-per-cent tax, or contrives to evade it, and competes with A in the open market. Then, in such a case, this three-and-an-eighth-per-cent tax upon product manifests itself as ten per cent upon the entire investment and absorbs the entire profits which otherwise might have

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elements—materials, goods, money. “Facts prove that the suppression of circulation is a cause of ruin for the land as for every other source of production. Look at Spain since the expulsion of the Moors, who had carried to so great a height the theory and practice of agriculture. The land, having become the property of a few great families or the clergy, was consolidated. Its circulation ceased completely, and production ceased with it.”

been realized; so that the business of A first drags, then stagnates, and is finally abandoned; while his workmen are discharged, the village where the shop is located runs down, the artisans, shopkeepers, and professional men connected with it complain of hard times and emigrate from the locality or the country, while the railroad fails to confer all the benefit to the community or profit to its stockholders that might be possible. B, on the other hand, exempt from the tax, keeps on working, and when hard times come continues his sales and the occupations of his workmen by taking *five* per cent profits instead of *ten*, and selling his goods, as he can afford to, at reduced prices to meet temporary conditions. Actual practical illustrations of the injustice and disaster consequent on such discrimination in respect to tax burdens and exemptions are afforded on a small scale in the history of much railroad management, and to a larger extent where two nations with different systems of taxation undertake to compete with each other in the sale of the products of their labour in the common markets of the world. We find here an explanation also of the immediate beneficial effects which attended the first tentative measures of reform in the British tariff instituted by Sir Robert Peel in 1842 and 1845, which, although consisting mainly in the removal of numerous small but obstructive duties, nevertheless started British industry forward by leaps and bounds, even before the larger burdens of tariff restrictions were removed in later years.

As the characterizations of "poll," "head," or "capitation" taxes, the only possible form of *direct* taxation on a person, and of the advantages and disadvantages of indirect taxes, through the agency of which the Federal Government collects the largest proportion of its revenues, have been already pointed out, the field of discussion under this head is practically limited to the existing methods of State or local taxation on property and business, in contradistinction to national or Federal taxation, or to the system under which nearly six tenths of all the contributions which the people of the United States make for the support of their governments are assessed and collected.

In Great Britain about two thirds of the revenue of the kingdom is from "local" in contradistinction to "na-



tional" taxation—£53,000,000 in 1890. Of this amount some £32,000,000, or about three fifths, is raised by rates on the annual value of land and house property in various localities. The next largest source of local revenue is from tolls, dues, etc., from docks, piers, harbours, ferries, and markets, and yields over £7,000,000, or thirteen per cent of the total. The total expenditures for local purposes in 1890 were returned at £67,000,000; the difference between local expenditures and receipts being made up by contributions or grants from the inland revenue department of the kingdom and by municipal loans. The aggregate *local* debt of the kingdom is about one third of the national debt, and has been mainly incurred for municipal and urban improvements, such as water and gas supply, markets, tramways, parks, libraries, public baths, wash houses, drainage, and other improvements. The purposes for which the proceeds of local taxes are expended in the United Kingdom are mainly for poor relief, gas and water supply, schools, police, asylums, etc. In a report made to the British Association for the Advancement of Science in 1870 by Mr. Stanley Jevons, it was stated that the methods by which the local taxes of the kingdom were then levied were substantially according to an act passed in the reign of Elizabeth.\*

POPULAR THEORY OF TAXATION IN THE UNITED STATES STATED AND EXAMINED.—The general idea which constitutes the basis of the system of State or local taxation mainly recognised in the United States (though not in other countries), and generally known and designated as "*the general property tax*," is founded on the assumption that, in order to tax equitably, it is necessary to tax everything; the term *everything* being at the same time used in a sense so indefinite as to embrace not merely things in the nature of physical actualities other than persons, but also persons, incomes, rights, representatives of property, titles, trusts, conclusions of law, debts, and in short any act of assessing capable of resulting in the obtaining of revenue. As a logical consequence of this idea, the

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\* This history of the law affecting valuation is told in the first report of the commission appointed to inquire into the subject of local taxation, presented to Parliament in December, 1898.



exemption of anything from taxation is furthermore held to be not only impolitic but unjust, and if made necessary by circumstances, as something to be regretted.

The general property tax for general State purposes exists in all but four of the States of the Federal Union—Delaware, New Jersey, Pennsylvania, and Wisconsin. In Delaware there has been no property tax since 1877, as its expenses are defrayed mainly by licenses and taxes on railroads. In New Jersey there is only a school tax on property, but no property tax for general State purposes. In Pennsylvania the State tax is levied only on personal property. In Wisconsin the so-called State tax is levied only to defray the interest on the debt, and for the purpose of contributing to the university (one-eighth-mill tax), schools (one-mill tax), and expenditures on account of the insane. But there is no property tax for general purposes. In addition to these four cases a property tax is levied in Vermont only in case the corporation taxes do not suffice to pay the entire expenses of the State.—*Seligman, Financial Statistics of the American Commonwealths, 1889.\**

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\* The statutes of Massachusetts enacted for making this system of taxation effective, and which have been substantially adopted by most of the States of the Federal Union, thus specify the objects, persons, and property that shall be subject to taxation:

SECTION 1. A poll tax shall be assessed on every male inhabitant of the Commonwealth above the age of twenty years, whether a citizen of the United States or an alien.

SEC. 2. All property, real and personal, of the inhabitants of this State, not expressly exempted by law, shall be subject to taxation.

SEC. 3. Real estate, for the purpose of taxation, shall include all lands within this State and all buildings and other things erected on or affixed to the same.

SEC. 4. Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are, ships and vessels at home or abroad, money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for, but not including in such debts due any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate, public stocks and securities, bonds of all railways, including street railways, stocks in turnpikes, bridges, and moneyed corporations, within or without the State, the income from an annuity, from ships and vessels engaged in foreign carrying trade, and so much of the income from a profession, trade, or employment as exceeds

Equally popular and plausible is the argument by which this assumption, and the administrative system based upon it, is upheld and defended. "Is not all property," it is asked, "either directly or through its owner, protected by the state or sovereignty?" "Do not all persons owe allegiance to the state?" And if so, "why should not all persons and property contribute to the requirements of the state for revenue in proportion to their ability?"

But, popular and plausible as are the arguments and assumptions for such a system of taxation, which, in the case of the United States, has been made operative under State, municipal, and local governments over the persons, property, and business of over seventy millions of people, and fortified by a vast amount of adjudication, it will require but little investigation and analysis to satisfy any one who can divest himself from the influence of old prejudices of the truth of the following propositions: *First*, that the assumption that it is necessary to assess everything in order

the sum of two thousand dollars a year; but no income shall be taxed which is derived from property subject to taxation.

The statute exempts from taxation the property of the United States and of the State; of the literary, benevolent, charitable, and agricultural institutions or societies incorporated within the State; all property of the common-school districts; the household furniture of every person not exceeding one thousand dollars in value, and wearing apparel; farmers' utensils, not exceeding three hundred dollars in value; houses of religious worship; mules, horses, and neat cattle less than a year old; swine and sheep less than six months old; and "the polls and estates of persons who by reason of age, infirmity, and poverty are unable to contribute fully to the public charges."

"No ship or vessel, unless actually engaged in foreign trade, or in part undergoing repairs, shall be deemed to be engaged in such trade."

The statutes of the State of New York to the same effect are more concise, but equally comprehensive. They provide:

1. "All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemption hereafter specified.

2. "The term 'personal estate' and 'personal property' shall be construed to include all household furniture, moneys, goods, chattels, debts due from solvent debtors, whether on account, contract, note, bond, or mortgage, public stocks and stocks in moneyed corporations; they shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate."

to tax equitably involves an impossibility, and therefore unavoidable inefficiency, injustice, and inequality in administration; *second*, that, as popularly used in respect to matters pertaining to taxation, the term *property* is made to apply equally to entities and to symbols or non-entities, which is in itself an absurdity; and, *finally*, that the outcome of all this is a system which powerfully contributes to arrest and hinder natural development, to corrupt society, and is without a parallel in any country claiming to be civilized. And, in illustration of this latter point, it may be added that, notwithstanding recent discussions and publications, this whole subject is yet so unfamiliar to the people of the United States that probably nine out of ten of its best-informed and collegiate educated citizens, and even members of the bar, take it for granted that the method of assessing and collecting taxes for local and municipal purposes is substantially the same all the world over; and would be greatly surprised to find on investigation that the American system is one of the things that is exclusively American and so little esteemed by the people of other countries as to be for such reasons strictly "non-exportable."

**TAXATION OF REAL ESTATE.**—Attention is first asked to the defects of this system in respect to the taxation of real property. Here everything, as the term implies, is real, tangible, visible; something which can not be concealed; something which can not, under any circumstances, be removed beyond the jurisdiction of the State, except by transfer to the Federal Government; something concerning which the laws and decisions of the courts harmonize rather than conflict. In the valuation of real property, furthermore, it is possible to apply such tests and verifications as will restrict the errors of estimate within comparatively narrow limits. It would also seem as if the law as it exists upon the statute books of most of the States was sufficiently clear and explicit in its declaration and mandate. Thus the language of the statute of the State of New York is as follows:

"All lands within this State, whether owned by individuals or corporations, shall be liable to taxation. The term 'land' shall be construed to include the land itself, all buildings, structures, substructures erected upon, under,

or above, or affixed to the same; all wharfs and piers; all bridges; all telegraph lines; all surface, underground, or elevated railroads and the iron thereon; all mains, pipes, and tanks laid or placed in, upon, above, or under any public or private street or place; all trees and underwood growing upon land; and all mines, minerals, quarries, and fossils in and under the same."

In most of the States of the Federal Union the tax laws require that the assessment of all property shall be at its full and fair cash value; and the judicial authorities of the United States have furthermore held that the requirement of approximative equality inheres in the very nature of the power to tax, irrespective of any constitutional or statute provisions.

In the State of New York each assessor on the completion of his official labours subscribes an oath of which the following is the material portion:

"We do severally depose and swear that we have set down in the foregoing assessment roll all the real estate in ———, according to our best information, . . . and that we have estimated the value of said real estate at the sums which a majority of the assessors have decided to be *the full value thereof*." And the law further provides that "every assessor who shall wilfully swear false in taking and subscribing said oath, shall be guilty of and liable to the penalties of wilful and corrupt perjury."

It is difficult to see how language, other than this, could be made more clear and explicit; and it is accordingly evident that if the law fails in its execution, as it certainly does, the fault is not in the statute but in its administration.

Let us now see what are the acknowledged facts in respect to the valuation of real property in New York and other States where the observance of substantially like conditions are imperative.

In some instances in New York the valuation of real estate for taxation is reported as low as twenty per cent of its real value. In a majority of cases in the country the rate varies from twenty-five to thirty-five per cent, and rises in the cities to fifty and possibly sixty per cent of the maximum. In one case, mentioned in the report of the State assessors in 1879, two adjoining counties of the State

made a difference of twenty thousand dollars per mile in assessing the same railroad. In short, there can not probably be found a single instance in the whole State, unless possibly in the case of certain unoccupied lands, the property of non-residents, where the law as respects the valuation of real property is fully complied with, and where the oaths of the assessors are not wholly inconsistent with the exact truth. The official reports of other States abound with like reports of flagrant inequalities in the assessment of real property. As a rule, where assessors are dependent for their tenure of office on political favouritism, there is no pretence, notwithstanding their oath, of complying with law.\* When, as is often the case, a State tax is apportioned to the several counties of the State, and by the counties to their respective towns, there arises a double competition between assessors of counties in the aggregate and of the towns for making the lowest possible valuation of property, especially real estate.

In a large number of States (twenty-one in 1890) an attempt has been made to correct the undervaluation of property rightfully subject to taxation by creating boards of equalization, with power to raise or lower the valuations of county officials, with a hope of securing substantial uniformity; but this measure has not been successful, and the most intelligent members of such boards have recorded their opinions that it is impossible under the present system to effect any just distribution of the incidence of taxation.

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\* "The strife between counties to reduce assessments has not ceased, and in all probability will not, as long as assessors are elected, or selfishness be a passion in the human breast."—*Report of the California State Board for the Equalization of Taxes, 1885-'86.*

## CHAPTER XVIII.

### THE EXISTING METHODS OF TAXATION.

#### PART II.

**TAXATION OF PERSONAL PROPERTY.**—Great, however, as may be the inequalities in the valuation and assessment of real property, those which obtain in respect to personal are so much greater as to almost preclude the idea of comparison.

In the incipient stages of society, when property consisted almost or quite exclusively of things tangible and visible—lands, buildings, slaves, horses, cattle, ships, household effects, and implements—when railroad shares, bonds and mortgages, certificates of deposit, and all the multifarious forms of credits and evidences of debt, by which we are enabled to-day to secure interests in land or in visible, tangible personal property in the possession of others, were absolutely unknown,\* and when the rate of taxation was comparatively small, the theory under consideration was not impracticable in its application, and, under most circumstances, afforded but little opportunity for the working of injustice in respect to arbitrary discriminations in assessing. For when personal property was of a visible and tangible character there was no opportunity to conceal its ownership and to avoid the tax. Each member of the community furthermore took a sufficient interest in his neighbour's affairs to see that justice was done in this regard. This kind of friendly interest found expression in Rhode Island in a law that was passed in 1673, by which it was provided that, under certain circumstances, a citizen might be required "to give in writing what pro-

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\* Of the evidences of wealth owned by one of the richest families in the United States, almost the whole did not have an existence as recently as the year 1840,

portion of estate and strength in particular, he guesseth ten of his neighbours, nameing them in particular, hath in estate and strength to his estate and strength." It is only fair to add, however, that this law was intended to prevent tax-dodging, and only required a man to guess with respect to the relative size of his neighbours' estates to his own, when he himself was suspected of having undervalued his own estate. Very curiously this ancient law and practice find expression to this day in Rhode Island in the circumstance that no citizen of that State is qualified to vote upon any proposition to impose a tax, or for authorizing the expenditure of public money, that has not paid a personal property tax *six* days preceding such day of voting. Lists of persons who are or may be qualified to vote generally are published and placarded before election, with prefixes to each name, showing the electoral qualification of its representative on the list, whether the same is dependent on real estate or personal property taxation. Any person who shall take down or destroy this list once placarded is liable to a fine of three hundred dollars, or three months' imprisonment.

Then again very little of a citizen's property was situated without the territorial jurisdiction of the taxing power, or indeed without the territorial limits of the hamlet, town, or city in which the citizen lived. Then a man could not very conveniently live in one place and do business in another. Within a century an English court has declared a contract invalid which stipulated that one of the parties thereto should do an act in London and Oxford the same day, because the stipulation involved in this particular an impossibility. Now the distance involved could be traversed in about an hour. The nature of property, as well as the means for moving it, was also such as to render all transportation difficult, and rapid transportation impossible. The discrepancy in taxation as respects different places was also so small that no great advantage could be gained by shifting one's residence or property for the sake of evading taxation; and the difficulty and inconvenience of so doing were so great that the temptation could hardly have existed. But even in the most simple condition of society the practical application of what may be properly termed the "infinitesimal" system of taxation must have been al-

ways attended with great difficulties, for the reason that it involved and necessitated personal inquisitions, than which there is nothing in government that men more dislike and resist; and, in the language of a committee of the French National Assembly of 1789 (of which Talleyrand and Larochefoucauld were members), the recognition and practice of which, by any government, is something inconsistent with, and antagonistic to, the maintenance of a free people.

It is not generally known, furthermore, that Alexander Hamilton, as a member of the conventions which framed the Constitution of the United States and the first Constitution of New York, gave all his influence in favour of the restriction of all internal or local taxation to visible, tangible objects, and to the assessment of these specifically, and by some uniform and simple rule. The language used by him in one of his papers on this subject is as follows: "The genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands. Whatever liberty we may boast in theory, it can not exist in fact while (arbitrary) assessments continue." \*

Again, had nothing come down to us in English history from the time of Edward III, other than one of the assessment rolls of that period (when there was little or no property capable of taxation but what was visible and tangible), the evidence would be complete that the mass of the English people were but little better than slaves; for the mere inspection of such rolls shows that their preparation involved such an inquisitorial scrutiny into domestic life, such a seeing, handling, enumeration, and minute valuation of everything in the household, from the utensils of the kitchen to the furniture of the bedchamber, as to make personal freedom, or a sense of self-respect, on the part of the taxpayer who submitted to such a scrutiny, almost an impossibility.†

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\* The *Continentalist*, No. VI, in *Works of Alexander Hamilton* (Lodge's edition), vol. i, p. 270.

† A copy of an assessment roll of the time of Edward III (1329-'67) given by Lingard, in his *History of England*, contains a list of articles, down to a towel and a bench; and the historian notes that in the returns are carefully mentioned the very rooms



And in this connection it is instructive to again refer to the famous insurrection of English yeomen and peasants under "Wat" the Tyler, in the reign of Richard II, the successor of Edward III, which originated directly in the attempt of a tax-gatherer or assessor to ascertain, by brutal personal examination, whether a daughter of "Wat's" had attained the age of puberty, and in consequence had so become liable to enrolment for capitation assessment.

But to whatever extent simplicity in the elements of property simplified the original methods and ideas in respect to local taxation, the problem involved rapidly changed, and became more and more intricate as increasing population, and increasing commerce, and intercommunication, required that property should, to a great extent, be put into a condition to admit of being readily mobilized, in order to allow of its most profitable use and application. Thus a large part, in fact the larger part, of what is to-day termed "personal property" in every civilized state is of the most intangible character, and in great part invisible and incorporeal: such, for example, as negotiable instruments in the form of bills of exchange, state, municipal, and corporate bonds, and the multiplied forms of evidence of indebtedness, certificates of stocks, copyrights, patents, legal-tender notes, etc., all of which, if entitled to the name of property, is, through a great variety of circumstances, constantly exposed to fluctuations in value, frightful in amount, and incalculable in their suddenness, and under the influence of which wealth vanishes as if by the wave of a magician's wand. It is offset or measured by indebtedness which may never be the same one hour with another; is easy of transfer, and, as essential to using, is in fact continually transferred from one locality to another, and from the jurisdiction of one state to the jurisdiction and laws of another and a different state; is here to-day, gone to-morrow; is burned, sunk at sea, lost in mines, patents, railways, factories, trading associations, and in a thousand other different ways. It has been recently said that five men who do business in Boston can together control or dis-

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in which the articles were found, and that there were no exemptions except one suit of clothes for each person, which were supposed to be included in the tax levied on the poll or person.

pose of an amount of property which equals one fifteenth of the entire assessed valuation of that city; and that they could, if they pleased, carry round the evidence of the existence of that property in their coat pockets, or, according to popular theory, the property itself.

For the purpose of ascertaining the amount of taxable personal property owned by individual citizens two methods have been employed in the United States:

1. In several States, such as Massachusetts, Connecticut, and Illinois, the taxpayer is required to give each year to the assessor a detailed and verified statement, carefully itemized, of all the personal property owned by him or under his control and of every kind, sort, and description. This method is generally known as "the listing system." In several of the States the principle that a State can only tax that which is within its territorial jurisdiction is ignored, and even visible tangible property situated outside of the taxing State is required to be returned for the purpose of taxation.

2. The other and more general method of ascertaining taxable personal estate is that which is exemplified in the State of New York, by which the assessor guesses at the personal property of the victim, and places him upon the list at such a figure as either his information or imagination sustains him in considering to be that which justly represents the personal estate of the taxpayer.\*

In view of the fact (made certain by all experience) that very few returns of personal property, even when supported by oaths, are worthy of implicit credence, the posi-

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\* "In a case involving the assessment of personal property, in one of the courts of this State a few years ago, an assessor in one of our cities testified that his method of ascertaining what personal property a taxpayer owned was to examine the directories, the county clerk's office, and papers relative to estates of deceased persons; and when he lacked definite information, to guess at the assessment from the place of business or of residence occupied by the taxpayer. If the tax was cheerfully paid for two or three years, the personal assessment would then be 'marked up.' This process of increasing the personal assessment went on until, as the witness graphically said, the taxpayer 'squealed,' when the amount was finally fixed at what the taxpayer would bear without swearing it off."—*Address on the Taxation of Personal Property, by Julien T. Davies, before the Manhattan Single Tax Club, January, 1891, New York.*

tion of the assessor who honestly desires to enforce the law is one of great difficulty and embarrassment. For, in the absence of some superhuman power which will permit that to be seen which to ordinary vision is invisible, and to know what, through the exercise of ordinary reason, can not be known, any attempt on his part to obtain independent cognizance of such commercial and financial instrumentalities for the purpose of valuation and assessment is, on its face, an impossibility; and if the co-operation of the person to be assessed is to be invited or relied on, two of the most powerful influences that can control human action—love of gain, or the unwillingness to part with property, and the desire to avoid publicity in respect to one's private affairs—immediately unite to oppose and prevent such co-operation.

A resort to personal inquisition, with the accompanying machinery of oaths, "dooming," and penalties, is next in order; under which the State, ignoring all rules enacted for the protection of debtors in the ordinary collection of debts, pursues the citizen for the collection of what it claims to be a debt, with no better result, in nine cases out of ten, than the impairment of the public sense of both justice and morality.

But it is claimed that each individual owes the State annually a certain sum of money in the way of taxes, proportioned to his entire property. If he voluntarily pays, he escapes arbitrary measures. If he declines to pay, or tries to avoid payment, he has no just cause to complain if he is regarded in the light of a criminal, or if the same arbitrary measures are used to collect his tax as if it were a debt owing by one citizen to another. Let us examine this averment.

If the defaulting taxpayer is to be regarded as a criminal, and as such placed in the worst possible light, he certainly ought not to be deprived of the privileges of a criminal, which are a right to a public investigation according to the rules of evidence adopted by free and enlightened communities, a right to be heard before condemnation, and the right to be presumed innocent of having property subject to taxation until the fact is ascertained otherwise by legal proof. But under the existing tax laws of most of the United States there are not accorded to the taxpayer

the privileges of a criminal; for no tax can be assessed on a large proportion of the personal property of the State according to any rules of legal evidence that any common law court would adopt. No assessor, under the laws of New York, for example, in assessing personal property, can act judicially. The law gives him no power to obtain legal testimony of a character that is admissible in court; he must act the part of an arbitrary despot against an inculpated taxpayer, or not act at all, and his conclusions for acting must be reached at best by the testimony of those who have no means of knowing anything, in a legal sense, about the subject-matter under investigation. It seems clear, therefore, that any attempt to tax without legal evidence is an act of usurpation or despotism, wholly antagonistic to the principles of a free government, and that it is a mockery to characterize such acts as, in any sense, judicial proceedings. Nor does the right to reduce or regulate the assessment by the oath of the taxpayer relieve the law, in any degree, of its unequal and despotic character; for every individual holding public office knows that oaths, as a guarantee of truth, in respect to official statements, have ceased to be of any value. The assessments made according to the oaths of parties, furthermore, are not made according to legal evidence, upon examination and proofs; but according to the will and secret caprice of each taxpayer, instigated by his selfishness and the natural depravity of human nature. Each taxpayer, under the present rule, becomes, therefore, the interpreter not only of the law but of the fact, and makes a secret interpretation of both, and we have as many interpreters of the law as there are numbers of taxpayers; and also an indefinite multiplicity of assessors; for each person who unfairly reduces his own assessment arbitrarily assesses thereby some other of the community for the difference. Could or would any people apply the same rules for the collection of debts? Is there any one who has so much confidence in human nature that he will propose a law that a person who is sued shall be discharged from all claims of indebtedness if he will make oath, interpreting both the law and the fact himself, that he owes the claimant nothing? Is it believed that under tariff laws the government could get sufficient revenue to pay for its collection if the importer was per-

mitted to offset debts against the value of his goods; or if the law was peremptory that his oath alone should be given, and that there should be no legal examination, inspection, or proof of the value or character of the importations?

In whatever aspect, therefore, we regard the present popular system of local taxation in the United States, it is arbitrary and in violation of the principles of constitutional government. If the assessor acts, he acts solely by his despotic will, and without any reference to legal proof or evidence, such as is enforced in recovering private debts; and if the taxpayer, by his oath, becomes the arbiter, his will is supreme and not subject to investigation or control. It is a system, in short, that violates all the laws of evidence, the growth of centuries in civilized countries; that makes secret that which should have publicity, and proceeds upon a basis that could not be recognised for one moment in the collection of debts, or in the trial of persons accused of the most heinous of offences.

Such, then, are the difficulties which all experience has shown to be attendant upon every attempt to tax personal property of an intangible and invisible character, and which all who have investigated the subject acknowledge to be insuperable. As not a few, however, who are ready to make this acknowledgment nevertheless insist that all personal property that is visible and tangible and can not be concealed, but can be reached effectively and equally, ought to be taxed; and as the drift of popular sentiment in the United States at the present time favours this assumption, it is important to next consider the nature and extent of the results attainable by intelligent and faithful assessors acting in conformity with it.

As the experience, however, of the States that have enacted the most precise and stringent methods of taxation proves beyond question that the returns of the owners of visible, tangible personal property, even when supported by oaths, will not, as a rule, afford a basis for the correct valuation and assessment of such property, the further assumption is warranted that the attainment of such a result in even an approximate degree must depend on the personal visitation and inspection of the most intelligent and honest assessors. And here at the very outset of the

prospective investigation its inherent insuperable difficulties begin to manifest themselves.

Thus a large proportion of the so-called personal property of every highly civilized country which is *not* intangible and invisible, and which requires only ordinary perception for recognition and valuation, is in the nature of instruments or subjects of commerce between states and nations; such as railroad machinery, ships, steamboats, immense stocks of raw and manufactured products accumulated in store for the sole purpose of movement, or actually *in transitu*. As a matter of fact the granaries for no small portion of the surplus stock of the world's cereals are at the present time ships and railroad cars in the process of movement to the points of greatest demand for consumption. What shall be the *situs* of all such things for assessment? If actual location is to be determinative, then a product of grain, or merchandise, which, in movement for a market, or conversion into other forms, may happen to be in Illinois in April, in Ohio or Massachusetts in May, in New York in July, in New Jersey in August, and in Connecticut in October, will be liable to five separate taxes in one and the same year; for the laws of each of these States require their assessors to return, for taxation, all such property as at the periods mentioned may be actually within the sovereignty and jurisdiction of the taxing authority.

If, therefore, the existing system of taxing visible and tangible personal property in the United States is to be continued and made equitable and effective, the first essential step for the purpose of making it such, by preventing evasions and avoiding duplicate taxation on one and the same persons and property, is for all the States to agree that all their assessors shall make their visitations, inspections, and appraisements for the purpose of assessment on one and the same day, as, for example, the first day of April. The following probable forecast of the result has been made by a recent writer:

“On the appointed day, all over the country, a swarm of assessors must besiege the factories, mills, shops, and stores for the purpose of making an honest valuation of all merchandise on land. This valuation must be completed in one day; or otherwise Smith's valuation being com-

pleted on April 1st, while Jones's is left to April 2d, there will be a midnight exodus of easily portable goods from Jones to Smith, so that one assessor shall find little of value in the possession of Jones on April 2d. No help must be asked in the work of valuation from the owners or clerks; for if that is done, the assessor might just as well accept the sworn returns of the owners, as is done now, with the most ludicrous and inequitable results. As it is evident also that it would be impossible for the owners themselves to make such a valuation in one day, even with the aid of all their clerks, there must be a number of assessors employed, exceeding all the number of persons employed in holding and selling merchandise. The work might, however, by extreme diligence be done in a rough way by two million local assessors. As it would take them at least three days to tabulate, copy, and file their returns, besides the one day occupied in valuing, each would serve at least for four days; and if paid at the rate necessary to procure men competent for the task, the lowest cost of such an assessment, independent of printing and stationery, could not be properly estimated at less than forty million dollars.

"Again, on 'assessment day,' there would be universal concealment of all articles of small bulk and great value. Watches, jewels, gold, money of all kinds, and every like conceivable thing would vanish from sight. Men would walk about stuffed with valuables. Old stoves, pots, and pans would be filled with money and jewels. Valuable goods which could not be hidden would be covered with dust or otherwise made to look almost worthless. In every mill and factory manufactures would be kept in an unfinished state, as far as possible, until assessment day had passed. A thousand devices would be resorted to in order to reduce the apparent value of the things which the assessor would inspect, or to prevent him from seeing them at all.

"In order to make this plan of official valuations successful, the assessors must enter every room in every house and strip naked every man and woman whom they suspect of concealing taxable property. This is the only way in which visible, tangible personal property ever was or ever can be fairly, equally, and effectually taxed.



“And, when all this was done, the system would none the less fail. It could not be made even approximately correct. Every article would be valued very much too high or very much too low. Nor would the average produce any fair result. The goods of Jones would be appraised at two hundred per cent of their real value; the goods of Smith at ninety per cent; and the goods of Brown at fifty per cent. Jones would thus be cheated heavily, and Smith moderately, for the sole benefit of Brown.” \*

On the other hand, if the fiction of law, that personal property follows the owner, is to govern, then all such property may be taxed *where it is not*, and be exempt from taxation in the place *where it actually is*, and where it shares in the benefits that flow from the protective expenditures—police, fire department, etc.—which are incident and necessary to the locality. Or, as is very often and perhaps most usually the case, the same property is subjected to double taxation; and as a proof that this latter supposition, which seems on its face an absurdity, is a matter of constant experience, it may be mentioned that some years since, and probably at the present time, a well-known publishing house was regularly taxed in Cambridge, Mass., for so much of its stock in trade as was kept in store and permanently employed in business in New York city, although it was admitted that the same tangible, visible property was at the same time regularly taxed by the New York authorities; and, furthermore, when a protest was made to the Massachusetts authorities against the continuance of this injustice, the decision was rendered, that under existing Massachusetts statutes the plundered taxpayer could have no remedy except by change of business or change of (State) residence.

Again, if a foreign banker subscribes to any of the State or municipal loans of the United States, the bonds or other evidences of indebtedness which he receives in exchange for his money are exempt from taxation by reason of his nonresidence; but if a *resident* widow or maimed soldier be moved by the desire for security to purchase a little of the same loan, the small rate of interest which

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\* Taxation of Personal Property, Impracticable, Unequal, and Unjust. By Thomas G. Shearman. New York, 1895.



such investments generally carry will be made still smaller to all such persons, by reason of an annual tax of from one to two or a greater percentage imposed on the holders, for the simple reason that they are residents; although the protection afforded to the latter is in no degree different from or greater than that afforded to their more fortunate and rival foreign competitors, who reside where such taxes are not imposed; all of which is equivalent to saying officially that whenever an American loan, particularly desirable for trust investments, is created, it shall be sacredly reserved for foreigners, or that bad portion of citizens of the United States who have no scruples about cheating the assessors. Local subscriptions to local indebtedness, with the augmentation of interest in the locality which would necessarily follow, are therefore discouraged; while to the American citizen who ventures to subscribe, residence is made an offence and coupled with a penalty.

In the case of agriculturists, who constitute more than half the population of the country who follow gainful occupations, their personal property, consisting mainly of farm animals, implements, and farm products, is always readily open for inspection, and has a nearly uniform value throughout the country. The personal property of farmers is accordingly more completely reached and more accurately valued by honest assessors than the property of any other class of the population.

Consider next the case of merchants. "What assessor, however honest and competent, can personally value all the stock of even one store, not to say the stock of all the stores in his district? Fancy an assessor making a personal appraisal of the stock of fifty drug stores, a hundred dry-goods stores, and as many groceries! In one store there are hundreds of different articles at different prices, by the yard, or the pound, or the gallon. Bales of goods lie side by side; some worth four cents a yard, some ten cents, some two dollars. The difference between goods worth one dollar a yard and those worth two dollars is often imperceptible to the eye of any one but an expert. But how can an assessor have time even to open all these bales, to look at them, much less judge accurately of their value? All the assessors of New York city could not approximately value the stock of one of its great drygoods merchants without

relying upon the word of his clerks. Therefore the stock of merchants and manufacturers would be assessed upon the valuation given by themselves, as in fact it is now. Thus the assessment of 'visible and tangible property,' in these important cases, is made and must be made in exactly the same manner as the assessment of bonds, notes, and other *invisible* property, resulting in a double or treble burden upon the simple and truthful as compared with their unscrupulous neighbours."

And, finally, as regards so much of other "personal property" as is tangible and visible, and clearly within the territorial jurisdiction of the taxing power, such as articles of personal adornment, clothing, furniture, works of art, musical instruments, books, etc., shall we assume that we have here a class of articles on which it is desirable to levy taxes? Of course, the popular answer will be in the affirmative; for are not all these objects, it may be asked, the very ones best fitted to sustain taxation? and are they not in great part luxuries rather than necessities? But how, it may be asked, are you going to tax them? for it is reasonable to suppose that if they are to be taxed, it is to be by a system that works equitably, and not by a system which, by taxing A, and letting B, C, and D escape, brings the law into contempt; and, by making the sense of the commission of a wrong on the part of the State the excuse for the commission of another wrong on the part of the individual, gradually undermines the morality of a community that does not wish to be dishonest.

An even approximately correct valuation of the above-enumerated articles is, however, a matter of great difficulty, and none but an expert can effect it. In very many houses there are many articles, like bedding, carpets, pictures, glass, porcelain, and the like, which exhibit few outward indications of undue value, and yet whose cost was very many times greater than similar articles in ordinary use. In fact, in proportion to the wealth of the taxpayer would be the failure of the most honest assessor to estimate the true value of his property. Some years ago a State tax commission in Illinois, with a view of aiding assessors to discover and rightly assess property of the character under consideration, recommended to the State Legislature the enactment of a statute whereby every

woman of "full age and sound mind," either directly or by her representative, should annually return to the assessors a statement of the value of all the jewelry, household furniture, and all other property in her possession; but these recommendations never received any higher consideration from the public than that of being denounced and laughed at. And most naturally; for what woman would tell her age or the amount and value of her jewelry and finery, and more especially to a stranger invested with brief official authority as an inquisitor and assessor?

Again, a very large part of what is termed "personal property" is, through the necessities, policy, or organization of governments, made exempt from taxation; as, for example, all instrumentalities and property of a government—national, State, or municipal—especially the bonds, notes, currency, and certificates of indebtedness issued by the United States. The several States also generally exempt or lightly tax the deposits and surplus of savings banks, the accumulations of mutual insurance companies, the property of charitable, religious, or educational organizations, and also a comparatively small amount—but large in the aggregate—of personal property in the form of household furniture, clothing, working tools, vehicles, and animals, and the produce of farms not sold but consumed by the producers; and that the present tendency of State legislation is furthermore to continually enlarge the list of exempt property. The aggregate money value of such exemptions can not be accurately stated, but there is reason to believe that they include about one fifth of all the personal property of the United States.\*

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\* The New Jersey State Board of Taxation, in their annual report for 1895, call attention to the fact that, out of the total amount of assessed property in that State in 1894, nearly ten per cent, or \$72,786,571, was exempt from taxation. The amount of tax exemptions in Newark, N. J. (a city which within recent years has been nearly bankrupt by excessive indebtedness and taxation), is reported for 1897 at \$18,076,568, made up in part as follows: Churches, \$4,081,750; private schools, \$196,900; city property, \$4,924,950; cemeteries, \$893,800; charitable institutions, \$1,231,700; public parks, \$4,654,867. Soldiers' and sailors' widows have exemption to the amount of \$523,675; firemen, \$79,445; the National Guard, \$36,475. These figures do not include the railroad exemptions, which are under the charge of the State Tax Commissioners.

**TAXATION OF THE INSTRUMENTALITIES OF COMMERCE.**  
 —Extensive as has been the foregoing review of the inherent difficulties attendant on the attempt to equitably and efficiently tax personal property, the results of taxing the instrumentalities or objects of commerce are especially worthy of additional notice in this connection.

A little reflection ought to abundantly satisfy that to tax the instrumentalities or objects of commerce in one locality, and to exempt the same from all direct taxation in another, will clearly not permit the former to enter a common market on an equal basis for competition with the latter. And yet this unjust discrimination is exactly what does result from the attempt of a majority of the States of the Federal Union to tax all such instrumentalities or objects under the general head of personal property, and the exemption of the same classes of property from any corresponding assessment in the British provinces of North America, and in all foreign countries with which the United States enter into extensive commercial intercourse and competition. Boards of trade and commercial conventions may pass "deploring" resolutions concerning the decay of American commerce, and committees of Congress may continue to investigate the same subject, but so long as ships, engaged in the carrying trade on the *free ocean*, and owned in Canada, England, France, Germany, and Holland, are not directly taxed, and ships engaged in competition in the same business, and owned in Portland, Boston, Baltimore, New Orleans, and San Francisco, are taxed, and taxed heavily, commerce will incline to move in the paths which are made easy and profitable to it. The difference in cost of a single penny per bushel in laying down grain at Liverpool may alone be determinative of the question whether millions of bushels shall be supplied by the wheat fields of the United States or those of Russia, India, or Hungary.

"As a rule, the States of the Federal Union tax shipping as other property is taxed, regardless of the fact that the other leading maritime nations usually impose no taxes on shipping as property, but tax only the actual earning of shipping; assuming doubtless, and correctly, that from the very nature of its use shipping can not fairly share in the benefits which accrue from State and munici-

pal taxation for public purposes. In short, when a vessel is fulfilling the function for which it is built, it is navigating the ocean, remote, except during brief stay in port, from the fields and purposes to which State and local taxes are applied."

Only one State—Delaware—exempts shipping from all taxation; New York and Alabama exempt so much of their shipping as is engaged in foreign trade; Massachusetts, New Hampshire, and Connecticut tax the earnings only of their shipping in foreign trade; and, under decision of the United States Supreme Court, Pennsylvania imposes no tax on its shipping in interstate or foreign trade.

All the other States tax all classes of vessels as personal property, making no distinction between those engaged in foreign and domestic trade.

The comparative burden of taxation on shipping in the United States and the maritime states of Europe finds practical illustration in the following examples: The city of Portland, Maine, levied more taxes in the year 1893 on its shipping (63,206 tons, valued at \$909,000) than the Cunard Company paid to Great Britain in the same year on a valuation of their ships of nearly \$9,000,000. The taxation of shipping at Charleston, S. C., is five times heavier than that levied by Great Britain or Germany. During the year 1893 the city of San Francisco levied taxes to the amount of \$85,675 on its shipping, a sum within \$600 of the combined taxes paid during the same year by the Cunard Line, the Hamburg-American Line, the North German Lloyd, and the Compagnie Générale Transatlantique of France to their respective Governments; their combined shipping comprising upward of 700,000 tons of the best steel and iron steamships valued at upward of \$58,000,000. And in addition to this onerous and (in comparison with other countries) discriminating burden of taxation on shipping, the income-tax act of 1894 imposed an additional and new tax of two per cent on the earnings of shipping in excess of \$4,000, which would have fallen mainly on that portion of the United States merchant marine—i. e., the great American steamships—which is most exposed to foreign competition, and which it is regarded as especially desirable to nationally foster.

On the other hand, Great Britain, Germany, France,

and the Netherlands tax only the earnings of shipping—i. e., an income tax. Austria in 1894 suspended for five years all taxation of its vessels engaged in foreign trade. Under this system of vessel taxation by the great maritime countries of Europe it is, furthermore, to be noted that the ownership of a ship that is idle and not earning does not entail any burden of taxation; but in the United States it makes no difference whether a ship be at work or idle, profitably or unprofitably employed, she pays taxes all the same.

The experience of the several States in respect to the taxation of vessels affords, however, a very striking illustration of the facility with which obnoxious taxes are evaded in the United States, or shifted upon those who are less able to bear them, and is thus related in the Report of the United States Commissioner of Navigation for 1894: "It is relatively an easy matter for the owner of several vessels to form a partnership with the resident of another State in which low taxes are imposed on shipping, and by allowing the vessels to stand in the name of such partner to escape the endeavour of the law to tax him more than his competitors in navigation are taxed. Thus, some years since, the authorities in Chicago decided to tax the shipping owned at that port on its full insurable value at the rate fixed for municipal taxes. The vessel owners of the city, in self-defence and to enable them to continue in business against competing ports, were compelled to make nominal transfers of their property, and thousands of tons of shipping, doubtless owned in Chicago, appear on the records of the National Bureau of Navigation as owned in other States. Though in the number and tonnage of its entries and clearances Chicago ranks with the greatest ports of the maritime world, yet its apparent rank as a ship-owning port is insignificant."

It is important also to notice how changes in the methods of doing business, in the facilities for transporting persons and property, and in the constitution of society and standards of morality, antagonize and nullify the popular ideas concerning taxation of personal property.

Formerly (as has been already pointed out) a man could not conveniently live in one place and carry on business in another. But now men may live and be taxed

at places where the taxes are light and do business every day in a city twenty, thirty, or fifty miles distant where taxes are high, and there be exempt from all taxation. And yet how are you going to prevent a citizen from deciding for himself where he will live and where, under the accepted fiction of law that personal property follows the owner, his personal property shall be taxed? Formerly, to bargain for the sale of goods in a place not farther removed than New York is from Boston or Philadelphia, transport them there, and receive the proceeds of the sale, was an affair of weeks. Now a man living in Boston may bargain for a sale of thousands of dollars' worth of goods in New York, transport them there, and receive his pay in the space of a single day. Nay, more. A man may acquire property and part with it at places on the opposite side of the globe with the greatest ease and security within the space of a few hours.

A change in the standards of morality has been alluded to as antagonizing methods of taxation. Thus, not very many years ago, every man knew, at least approximately, the amount and kind of property of all his neighbours, and knew that his neighbours knew the same in respect to himself. "He was willing to admit, under oath or otherwise, what everybody knew; and he would hardly dare to drive six cows to pasture every morning and swear in the afternoon that he had none." But now let us see from an indisputable experience of very recent date how the conditions of property and of morals have changed. Previous to January 1, 1889, the State of Connecticut, in accordance with common practice, taxed personal property in the form of bonds and notes from one to two or more per cent, wherever it could be found. The result was that the State from the outset could never reach for assessment but a small fraction of such property, although every citizen was required to annually submit a list to the assessors and make oath that he had included in it all property of the character in question; and this fraction, furthermore, tended to rapidly decrease. Thus, in the so-called grand list or aggregate valuation of the State for the year 1855, the value of the notes, bonds, and money at interest made subject to assessment constituted about ten per cent of the entire taxable property of the State.



In 1865 it was about seven and one half per cent; in 1875 a little over five per cent, and in 1885 about three and three quarters per cent; and yet during the period covered by these statistics it is probable that the amount of State, railroad, municipal, and farm-mortgage bonds owned by the citizens of Connecticut increased to an extent equal to at least one half the valuation of all the other property in the State returned and made subject to taxation. In 1855 the inhabitants of eighty-one towns of the State did not own a single mortgage bond. Not a bond was returned as owned in the rich city of Meriden. The twenty thousand inhabitants of the thriving city of Waterbury by their united efforts managed to scrape together only seven hundred and fifty dollars in bonds. So far as cash is concerned, there was never a community since mankind emerged from a state of barter that got along with so little. In 1889, however, the Legislature of Connecticut modified her former statutes, and provided that the owners of all notes and bonds who would register them with the State Treasurer, and agree to pay in advance a tax of one fifth of one per cent per annum for a period of five years, should be exempted from all further State or local taxation on the same. Note now the results. The law in question went into operation on the 1st of August, 1889, and between that date and the 1st of January succeeding, something over \$30,000,000 of bonds and notes were registered under the modified assessment,\* of which the treasurer in his report to the Legislature says, "Probably at least three fourths have never paid any taxes whatsoever." Here, then, within five months was uncovered to the taxing power a quantity of what the law makes property in excess of \$22,000,000, and returns are still being received in large volume. The conclusion, therefore, seems to be that there is a good deal of conscience in the highly moral State of Connecticut which can be induced to cheat and forswear on a two-per-cent tax, that can not be bribed on a tax of one

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\* For succeeding years the amounts registered with the State Treasurer were returned as follows: 1890, \$33,654,335; 1891, \$24,792,509; 1892, \$39,473,988; 1893, \$12,418,673; 1894, \$20,507,396; 1895, \$18,533,543; 1896, \$21,159,161. Why the large difference in the receipts of the above years occurred has not been satisfactorily accounted for by the State officials.



fifth of one per cent; or that a tax of from one to two per cent on bonds and notes in Connecticut is sufficient to nearly tax out of existence all conscientious scruples of its people in respect to the violation of law and the perpetration of fraud in respect to matters of taxation.\*

In view of these facts the following answer, made some years ago by a man of New England birth and education, but of unenviable character and influence, to a question as to his father's honesty, has no little of point and application: "He is honest as the world goes. He won't tell a lie for twelve and a half cents" (the New England ninepence), "but he will tell eight for a dollar."

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\* In 1897 the Legislature of Connecticut, not satisfied with the unexpected large amount of notes and bonds returned for taxation at the rate of one fifth of one per centum per annum when voluntarily paid in advance, doubled the rate of tax to two fifths of one per cent, or four mills on the dollar. What will be the result of this fiscal policy is yet to be determined; but it is to be regretted that the original experiment could not have been longer continued.

## CHAPTER XIX.

### THE EXISTING METHODS OF TAXATION.

#### PART III.

**DISTINCTION BETWEEN "REAL" AND "PERSONAL" PROPERTY ARTIFICIAL AND NOT NATURAL.**—As a further help to the understanding of the subject, it is important to here call attention to the circumstance that the distinction between real and personal property is, to a very great extent, an artificial and not a natural one, and that there is not only no common or accepted rule for their definition and distinction, but, on the contrary, a great diversity of statute enactment by the different States of the Federal Union and by foreign governments on the subject. (For abundant illustrations in proof of this statement, see page 374.) "The statute laws on the subject of taxation in the United States," says Mr. Hillard, in his *Law of Taxation*, "is as voluminous as the constitutional provisions are few and concise." With a general similarity, the laws of the different States are very diverse; and so numerous and frequent are the changes that the author disclaims any responsibility in his book for the implied statement that "the law of any particular State, however recent, is now in force."

The attempt, therefore, to recognise in a system of laws a distinction in respect to the so-called personal property that is perfectly arbitrary, and which forty-eight sovereign States of the Federal Union may alter at pleasure, is very likely to give a general result somewhat akin to that obtained by an artist who, in painting a landscape, selected a cow as his fixed point of perspective. If the cow had remained quiet, the picture might have been satisfactory; but as the cow walked off, the details of the picture were not harmonious.

VALUE RELATIONS OF LAND AND PRODUCTIVE CAPITAL.—One curious phenomenon attending the remarkable changes that have taken place within the last half century in the conditions of production and distribution of wealth, has been the more rapid increase in all countries of high civilization of that portion of their national wealth represented by the so-called personal property than in that portion represented by the value of land. Thus, in Great Britain, at the commencement of the present century, the value of land was believed to represent about forty per cent of the aggregate wealth or property of the kingdom. At the present time it probably does not represent more than twenty-five per cent of such aggregate. In the United States the increase in recent years of personal property has been so remarkable as to entitle it to be regarded as phenomenal; and it can not be doubted that in highly civilized and densely populated States, like New York, Massachusetts, Rhode Island, etc., the aggregate of property classed as "personal" is greater in actual value than the aggregate of "real" property. In the great American cities the value of personal property probably closely approximates the English proportion. A recent report of the Boston Business Association expresses an opinion that the value of the personal property of that city is three or four fold that of its realty! And yet the amount of personal property made available for tax assessments shows everywhere a remarkable decrease; and this, notwithstanding a great concurrent increase in population and in the assessed value of real estate. It may also be regarded almost an economic axiom, that universally the market value of the aggregate of land and that of the aggregate of other productive capital are equal; and for the reason that the market value of land is merely the reflection of the value of the productive capital placed upon it and its immediate vicinity. It would therefore seem to be certain that the decline in the valuations of personal property, above noted, is not real, but simply represents the failure and utter inefficiency of the existing laws which have been enacted with a view of assessing and collecting taxes upon such property.

The following are some of the most striking illustrations of the decline of tax valuations of personal property

in recent years in the United States: Thus, in 1866, the valuation of the city of Cincinnati, Ohio, for purposes of taxation was, *realty* \$66,454,602, *personalty* \$67,218,101. In 1892—twenty-six years after—the tax valuation of the real estate of the city was \$144,708,810, while its personal property had decreased to \$44,735,670; or, in other words, while the personal property of Cincinnati returned for taxation in 1866 was greater than the returned amount of real estate, the amount returned in 1892 was only about a quarter as much as the real estate; and yet during this quarter of a century the city of Cincinnati nearly doubled its population, and undoubtedly increased its wealth in a far greater proportion. In the city of Boston the value of the realty returned for taxation in 1868 was \$287,635,800, and of personalty \$205,937,300. In 1890 the corresponding figures were, realty \$619,990,275, personalty \$202,051,525, a disproportionate gain of realty of \$417,938,750.

In the State of Massachusetts in 1862 personalty was assessed at \$309,000,000 to \$552,000,000 of real estate, or in the ratio of fifty-six per cent of the latter. In 1891 the personalty was \$556,000,000 to \$1,679,000,000 of real estate, or in the ratio of thirty-three and a third per cent. That is, the personalty of the State in twenty-nine years increased only \$243,000,000, while the real estate increased \$1,123,000,000, or nearly five times as much in the same time. "This simply means that more and more personal property, under the rigid tax system of Massachusetts, escapes taxation. The real estate can not have increased in value without an increase in personal wealth with which to increase the demand for it. Real estate does not make a demand for itself." In 1870 the personal property of the entire State of Massachusetts returned for taxation represented an average of \$345 per capita.

It will be noted that the above exhibits represent the lengthened experience of the two States which adhere most closely to the infinitesimal theory of taxation; have a system of most comprehensive and explicit laws, framed by officials and enacted by legislators who believe in their theory, and a system of arbitrary administration that finds no parallel, except in thoroughly despotic countries, and is wholly antagonistic to the principles of a free government.

The experience of other States, where, under substan-

tially the same provision for the taxation of personal property, the administration is less rigorous, is also most instructive.

In Jersey City, N. J., the tax valuation in 1892 of realty was \$78,176,000, and of personalty \$6,539,750. In 1870 the valuation of realty in the city of Brooklyn, N. Y., was \$183,689,000, and of personalty \$17,559,980. In 1893 the corresponding valuations were \$486,497,000 realty, \$17,559,000 personalty; and of the latter only \$7,078,000 was assessed against individuals, the remainder being property of banks and corporations. Of the entire property of Brooklyn taken cognizance of by its tax officials in 1893, only 1.35 per cent of the whole was personalty proper.

In 1870 the entire value of the personalty of the city of New York, including bonds, jewels, pictures, furniture, bric-a-brac, etc., was put down by its assessors for taxation at \$281,142,696; in 1893 the corresponding valuation was \$370,936,000, of which less than half was personal estate proper, the remainder being various forms of corporate property, although it is reasonably certain that less than twenty men, residents of the city, held personal property in excess of this amount.

In 1870 the personal property of the entire State of New York returned for taxation represented an average of \$99.13 per capita. In 1893 this average had fallen to \$68.75 per capita. In Connecticut, in 1855, as before shown, State stocks, railroad, city, and other bonds, and money at interest constituted about ten per cent of the aggregate assessed valuation of property of the State. In 1885 the corresponding proportion for taxation was three and three fourths per cent.

Similar illustrations drawn from the recent tax experiences of nearly every State in the Union might be indefinitely multiplied, and in the most western States of the Union, where the communities are mainly agricultural, the opinion of officials is also to the effect that personal property, as a rule, exceeds realty, and to a great extent escapes assessment and taxation.

Another curious and interesting feature of the situation is that in all those States where the most minute and thorough system of questioning with respect to the ownership of personal property prevails, investigation shows that,

notwithstanding the acknowledged great increase in wealth in the form of personal property in recent years, the skill of its owners in concealing it has grown more rapidly; or, in other words, in every State in which a vigorous attempt has been made to reach and assess all the personal property of its citizens, a smaller percentage of such property is taxed to-day than was effected under operation of laws a quarter of a century ago.

#### RESULTS OF RECENT ADMINISTRATIVE EXPERIENCES.

—A notice of some comparatively recent administrative experiences in attempting to successfully enforce taxation of personal property is especially pertinent at this point.

In 1879 California proposed a new Constitution. It was drafted in accordance with what was supposed to be the interest of the agricultural voters of the State, and was by them ratified, the merchants, commercial and financial interests being almost unanimously arrayed in opposition and voting against it. Under this Constitution and the laws made in pursuance of it, the results have been thus summarized: "Not only were bonds, money, and credits taxable, without any deduction on account of debts, except from credits, and then only such debts as were due to residents of the State of California, but holders of stock in corporations were avowedly and intentionally subjected to double taxation; first, upon the corporate property, and again upon the capital stock, which is merely their evidence of title to that property. It was supposed, alike by the friends and enemies of the new Constitution, that under its operation personal property of every description would be thoroughly reached, and at any rate that whatever was by any chance overlooked would be more than made up by double taxation upon that which was found. The actual result has been to falsify all the predictions of both the friends and enemies of the Constitution—for it has done no good, and very little harm, except in promoting fraud—for the reason that the capacity of the patriotic taxpayer to commit perjury and the susceptibility of assessors to bribery have been altogether underestimated."

Some of the results have been positively ludicrous. "If the assessment returns are to be believed, in nine tenths of California there is not a pound of butter; in four fifths of the State the sheep do not produce any wool; fifty coun-

ties have quantities of beehives, but only four have any honey; personal property is vanishing from San Francisco; loans of money are becoming unknown in the rest of the State; bonds of cities and municipalities of all kinds are not held within the State to an amount equal to one sixth of the county bonds outstanding alone; and, finally, money has been smitten by a pestilence, two thirds of all that there was before the adoption of the Constitution having already taken to itself wings, and the remainder being evidently on the way. One of the great objects of the new Constitution was to tax railroad, telegraph, and telephone companies to the last cent of their value. The actual result has been that telegraph and telephone companies are now assessed for the cost of less than their bare poles, or about sixty-five dollars per mile. The railroad companies resisted taxation for one or two years, at the end of which, by a singularly simultaneous impulse of virtue, some thirty boards of supervisors directed their district attorneys rigorously to prosecute the railroad companies to the uttermost of the law. Thirty district attorneys forthwith hauled the railroad companies before the magistrates of justice. With equal promptness the thirty boards of supervisors met, and, without any consultation with each other, passed resolutions directing the district attorneys to compromise all suits at sixty per cent of the amount claimed; and the thirty district attorneys obeyed before the State officers could put in a protest."

It was anticipated that the new order of things would increase the burden of taxation on the city of San Francisco, and especially on personal property and money at interest. What actually happened is shown by the following figures: In 1880, before the new laws became operative, the city of San Francisco paid taxes on a valuation of \$68,586,000 of personal property not money, and on \$19,747,000 of money at interest or otherwise. In 1886, after the law had been operative for five years, it paid on a valuation of \$48,705,000 of personal property, a decline of one third, and \$6,188,000 of money, a decline of two thirds. In 1894, after the law had been in operation for fourteen years, it paid on a valuation of \$56,130,000 of personal property, a decline of \$12,454,000, and \$7,100,000 of money at interest, a decline of \$12,647,000.

It was naturally supposed that the new Constitution would have great influence in increasing the assessment of personal property in the form of tangible, visible merchandise, and of bonds and credits. But the assessors of San Francisco found less of merchandise to tax in 1886 in that city than they did in 1880; and less in 1894 than they did in 1880, while the value of bonds returned by its citizens declined from \$2,311,000 in 1880 to \$449,000 in 1886. The total increase in the valuation of merchandise for bonds and credits for taxation in the fourteen years from 1875 to 1889 was less than one per cent.

The most recent, important, and incontrovertible record, however, of administrative experiences on this subject is to be found in the report of a tax commission authorized by the Legislature of Ohio, composed of four eminently qualified citizens—two Republicans and two Democrats—and presented to the Governor of that State in December, 1893. It is no exaggeration to say that, since the days of the French monarchy under Louis XVI, no report has been or could be made more discreditable to the people of any country claiming to be civilized, honest, and law-abiding.

The report first shows that Ohio has “the most efficient and minute scheme” of listing in duplicate “all classes of property”—dogs specially included—“which has been devised in any State.” “Every citizen is bound under oath to make a complete return of his property,” embracing all forms of personalty. “If he declines to make the oath required by law, a penalty of fifty per cent is added.” This listing system in Ohio is characterized by the commission as like “the assessment list used in Germany in mediæval times (1531),” which it further asserts “has been abandoned everywhere in Europe.” The statute provides that a designated official “may through the probate court call before him the citizen and examine him if he suspects that the return is not a complete one”; and in addition to all this the law empowers each county to contract with such persons—“tax inquisitors”—who may give information as to any personal property that has been “improperly withheld from the returns”; and who shall be “rewarded” to the extent of twenty per cent of the amount of tax “recovered through their efforts.”

From a large amount of evidence collected by the com-



missioners and officially published by the State, the following selections illustrate the efficacy and workings of this system and its statutes:

For the year 1891 the gross amount of revenue collected in the whole State of Ohio through the operation of the tax inquisitorial law was about \$750,000, or about two per cent of the entire taxes of the State. For the nine years from 1885 to 1893 inclusive, during which time this act was operative in Hamilton County, which is mainly the great and rich city of Cincinnati, the whole amount of taxes paid by its citizens was about \$50,000,000, of which less than \$400,000 accrued through the operation of this agency. It is probable, however, that through its moral influence the taxpayers were induced to make larger returns of personal property than they would otherwise do. On the other hand, the commission reports, as a general effect of the "tax inquisitor law" in city countries that when a man of large wealth is made to pay through its agency he leaves the State; but in the country counties, as the man of means is not able to sell his property and remove from the State, he is forced to remain and pay the tax.

Again, the laws of Ohio require that all moneys owned by its citizens shall be annually returned for taxation. For the whole State the tax commission reports that there was on deposit in the year 1892 to the credit of individuals in national, State, and private banks, and exclusive of moneys redeposited by one bank with others, at least \$190,000,000, "and probably a much larger amount." Of this \$190,000,000, there was returned in 1893 for taxation a little over \$38,000,000. In connection with this experience the commission calls attention to the following other extremely significant facts: "Of this estimate of \$190,000,000, about 128,000,000 was deposited in the banks of the five counties containing the cities of Cincinnati, Toledo, Cleveland, Dayton, and Columbus. These same counties, however, returned for taxation only \$6,088,096, while the remainder of the State, having about \$70,000,000 in bank deposits, returned over \$32,000,000. In the spring of 1892 there were on deposit in the various banks (national, State, and savings) of the city of Cleveland about \$63,000,000. Of this money there was returned for taxation

in that same year only \$1,800,593; and about half of this sum was derived from the townships outside of the city."

The final conclusions of the commission were that "while in the country counties" (of Ohio), "where the assessor is personally acquainted with the circumstances of the taxpayer, and knows his wealth, the taxation of intangible property is perhaps feasible, it is in the city counties" an utter failure. The general property tax has become in the city counties" (of the State), "to a very considerable extent, a tax upon tangible property only; and that no appreciable part of the intangible property existing in the city counties is reached by our method of taxation."

The net result of all the comparisons made by the Ohio commissioners between city and farming districts finally goes to prove that *the tax upon personal property makes farmers pay from four dollars to seven dollars where it makes the residents of large cities pay one dollar.*

Speaking generally of the effect of this Ohio scheme of taxation the commission further says:

"The system as it is actually administered results in debauching the moral sense. It is a school of perjury. It sends large amounts of property into hiding. It drives capital in large quantities from the State. Worst of all, it imposes unjust burdens upon various classes in the community: upon the farmer in the country, all of whose property is taxed because it is tangible; upon the man who is scrupulously honest; and upon the guardian, executor, and trustee, whose accounts are matters of public record. These burdens are unjust because by the system as administered these people pay the taxes which should be paid by their neighbours." And the commissioners finally add that "these conclusions are in accord with all current authorities on the subject." \*

That this claim of accordance on the part of the Ohio commissioners is fully warranted, attention is next asked to the conclusions of other State commissions which within a comparatively recent period have also officially investigated and reported upon this subject. Thus, a tax com-

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\* See Carver, *The Ohio Tax Inquisitor Law*, in the publications of the American Economic Association.

mission of New Hampshire in 1876, after recognising the inefficiency of the existing laws for the taxation of personal property and "their corrupting and demoralizing influences," "frankly admit that they are unable to frame any law to which a free people would submit, or should be asked to submit, that will bring this class of property under actual assessment more effectually than it now is." An Illinois commission in 1886 asserted that the existing system "is debauching to the conscience and subversive of the public morals—a school for perjury, promoted by law." A Connecticut commission in 1887 reported that "the results of an investigation of nearly three years into the workings of our tax system have brought us to the conclusion that all items of intangible property ought to be struck out of the list. As the law stands it may be a burden upon the conscience of many, but it is a burden on the property of the few, not because there are few who ought to pay, but because there are few who can be made to pay." A West Virginia commission in 1884 asserted that "the payment of the tax on personalty" (in the State) "is almost as voluntary, and is considered pretty much in the same light as donations to the neighbouring church or a Sunday school."

In Massachusetts, where the law admits no offset of debts against visible and tangible property, and is regarded as complete, and where its execution is acknowledged to be most arbitrary and inquisitorial—some towns publishing each year every known item of each man's personal property, even down to the family pig and a string of sleigh bells—the most intelligent officials admit that their system is a comparative failure; and almost a complete failure as to reaching evidences of indebtedness, which, as before shown, constitute in modern times so large a part of the personal property of every civilized community.

In the State of New York, where the letter of the tax laws in respect to the subjects of taxation is nearly the same as in Massachusetts and Ohio, but the administration less stringent, and where the aggregate of personal property nearly or fully equals in value the aggregate of real property, the proportion of the former returned for taxation is not in excess of one fifth of the total assessed valuation; while in the great city of New York, with a

population of over a million and a half, not one per cent of her citizens stand upon the books of the assessors as possessing any personal property subject to taxation other than shares in banking institutions.

In Wisconsin the State appears to have drifted into the same condition of things as in New York, and the attempt to tax personal property has been practically abandoned, except in the small villages and rural districts. In Georgia, which is reported to be well served by its taxing officials, its comptroller asserts that in respect to the mere article of merchandise which can be seen and handled, not fifty per cent is returned for taxation, and that in the city of Savannah in 1886 not ten watches were subjected to taxation.

To complete this record of experience it is desirable to add that there is not a single economist or financier of note, either in the United States or Europe, who upholds the "infinitesimal" or "general property" tax as a desirable or essential feature of any fiscal system, its characterization by M. Leroy-Beaulieu, the celebrated French economist, being that "a cruder instrumentality of taxation has rarely been devised."

Again, in every country on the globe where a direct tax on personal property in the hands of individuals has been laid, the system has exhibited the same features of badness. No experience in any country has suggested any practical improvements of it. It has never been improved; it has never grown better; it has always, under all circumstances, exhibited a tendency to grow worse. It is a fact creditable to the superior intelligence of other lands that it no longer is found in any civilized country on the globe, the United States alone excepted; and in this country it is no longer found in Pennsylvania, New Jersey, and perhaps some other States.

Prof. E. A. R. Seligman, of Columbia University, who has written much on this subject, sums up the result of his investigations in the following language: "It will be no exaggeration to say that the general property tax in the United States is a dismal failure. Every country also, with the exception of Holland and the States of the Federal Union, has abandoned this system of tax as something wholly impractical. In recent years in both England and

France the necessity of raising increased revenues has drawn especial attention to the subject of local taxation; but in neither of these two countries has any prominent speaker or writer advocated the direct taxation of personal property, or even alluded to the subject, except to scout the very idea of such a proposition." \*

And yet, notwithstanding this record of disastrous and discreditable experience, and the opposition to the almost unanimous judgment of all whose investigations warrant the expression of opinion, the strength of popular prejudice in the United States in favour of the infinitesimal system of taxation is so great as to make the substitution of any better system a matter of very great difficulty, and perhaps a present impossibility. "Although all Europe, as already pointed out, has tried and discarded taxation of personal property, our own people have grown up under the opposite system. Every State tries to tax it. No American has any personal experience of a system which does not pretend to tax it. The proposition to dispense with such taxation, therefore, strikes every American as an experiment. Few Americans know or care anything about the experience of other nations."

There is, however, at the present time, some gratifying evidence of a change in popular sentiment in favour of radical tax reforms. Thus, in October, 1897, the grand jury of the county of New York made a presentment on the subject of taxation under the following circumstances: A complaint was made against the tax officials, charging undervaluations of property, and therefore perjury, but the grand jury finds in effect that the State laws are of such a character that assessors are almost inevitably led into blunders, and it recommends a general revision of

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\* Holland, by reason of her immense national debt, the largest, comparatively, of any country, has been obliged to maintain a most rigorous and extensive system of taxation in order to raise revenue sufficient to the wants and requirements of the state. But it has been prominently brought out, in recent years, that the decadence of Holland dates almost from the hour when taxes were imposed on manufactories, commerce, fishing industry, and moneyed capital. Business went elsewhere, and with the decline of business the ability to pay taxes diminished, and the burden of taxation augmented. See *Journal des Économistes*, November, 1871; also *Principles of Political Economy*, J. R. McCulloch, pp. 470, 471.

the tax laws imposing upon the State the duty of assessing personal property, so that local expenditure may be paid by real-estate taxes alone, and the "question of continuing or abolishing personal taxes" be "fought out on State lines."

A special tax commission, appointed by the Governor of Massachusetts, and composed of men of wide financial experience and business ability, after careful study of this subject, reported in October, 1897, in favour of the entire exemption of personal property and the substitution of other agencies (to be hereafter noticed) for the collection of revenue.

A fact of historical interest which ought not to be overlooked in this connection is that whenever a system of infinitesimal taxation (or a general property tax) has been projected, its authors have been led, as it were, by instinct to the conclusion that its execution, with any degree of effectiveness, must depend upon the employment of extraordinary and arbitrary measures. Thus, the old Romans, who first notably established the taxation of personal property at the period of the decadence of the empire, and who were not troubled with any restrictions of a constitutional character, or any very nice notions about personal liberty or general morality, clearly perceived this, and accordingly invested their tax officials with the power of administering torture as a means of compelling information (answering questions) and enforcing payment; and that the tax officials were not backward in using the power with which they were invested is proved by a variety of evidence.

Thus, Zosimus, who wrote in the fifth century A. D., states that the period of the tax collection upon general industry "was announced by the tears and terrors of the citizens, who were often compelled by the impending scourge" to meet their obligations; and Gibbon, in treating of this feature of Roman history, in a measure justifies the proceeding in the following language: "The secret wealth of commerce and the precarious profits of art and labour are susceptible only of a discretionary valuation; and as the person of the trader supplies the want of a visible and permanent security, the payment of the imposition, which, in the case of a land tax, may be obtained

by the seizure of property, can rarely be extorted by any other means than those of corporal punishment."

And it is also especially worthy to note that in every instance in which attempts have been made of late in the United States to remedy the recognised imperfections and inequalities of existing systems of local taxation, the persons intrusted with the duty, possibly without knowing, and probably without caring, what were the experience and custom of the old Romans, have been led by their instincts and intuitions to go as far in the torture direction for the obtaining of taxes on personal property as the conditions of our modern civilization and the state of public opinion would allow.

The most curious and confirmatory evidence of this is to be found in a method of procedure adopted in the city of Boston, Massachusetts—a method which has no parallel except in the records of the middle ages and of the Inquisition, and constitutes in itself a satire upon any claim to the enjoyment of a wholly free and enlightened government. For failing to obtain satisfactory information about the private affairs of any individual the chief assessors and their subordinates in that city, to the number of some fifty, meet in secret session in a large upper chamber set aside for the purpose, and appropriately termed the "dooming chamber," when the citizen in question, without being present either by counsel or in person, is arbitrarily doomed to the payment of any sum which a majority of those present may think proper, and from which "dooming" there can be no appeal.

The following record of the actual working of this system may be thus illustrated: During the year 1889 the whole amount of taxable personal property which the assessors of Boston were able to discover, exclusive of bank stock, was \$39,000,000, of which amount \$14,570,000, or thirty-seven and a half per cent, was returned as visible, and \$27,650,000 as invisible. Being dissatisfied with this result, which was all that was justified by any facts which the assessors could state, they proceeded to multiply it four and a half times by a mere guess. In their "dooming" chamber they guessed that personal property, other than bank stock, ought to be valued at \$186,000,000; and the citizens of Boston were compelled to pay taxes upon that



amount. Could anything be more monstrous or absurd than a system of taxation which, even when administered by phenomenally honest and competent men, produces such results?

**THE USE AND VALUE OF OATHS AS AN ADJUNCT OF TAXATION.**—Consideration is properly asked in this connection to the use and value of oaths, an increase in the number and stringency of which is often regarded as essential to effective and equal taxation. It is the all but unanimous opinion of officials who of late have had extensive experience in the administration of both the national and State revenue laws that oaths as a matter of restraint, or as a guarantee of truth in respect to official statements, have in a great measure ceased to be effectual; or, in other words, that perjury, direct or constructive, has become so common as to almost cease to occasion notice. In fact, there has come to be a feeling in the community that an oath in respect to matters in which the Government is a party is a mere matter of form, of mechanical procedure, and that its violation, especially with a mental reservation, and when the interest of other individuals is not specifically affected, does not in itself constitute a crime. The fact that the assessors of almost every State every year make oath that they have valued all property at its actual value, when they know they have not, constitutes one proof of the truth of this assertion. The everyday entry of goods at the customhouse at undervaluation constitutes another; the enormous frauds committed in recent years under the internal revenue laws of the United States, which in the case of distilled spirits entailed a loss in a single year of over \$130,000,000, and in which the taking of false oaths was at every step an essential feature, constitutes a third; while of individual examples, which every assessor of experience can detail, the record would be almost interminable.

During the past few years the low tone of commercial morality in the United States has been a fact generally recognised and much commented upon; but it has not, that we are aware, been made a subject of inquiry by those to whom the guardianship of public morals is particularly intrusted. How far the existing system of laws relating to taxation—national and State—are justly chargeable



with the results to which reference has been made, or how much in the division of responsibility is to be set down to the account of those who violate the law, and how much to those who, forewarned of the weakness of human nature, deliberately make laws which especially lead men into temptation, are yet unsettled questions.

A point of great interest and importance in this connection, though often overlooked, is that even if all the States of the Federal Union should entirely exempt personal property within their territory and jurisdiction from taxation, it would nevertheless, owing to the dual nature of the Government of the United States, be subject to a large measure of heavy and disproportionate taxation. Thus, the expenditure of the Federal Government, which represents taxation, was in 1896, including the cost of revenue collection, in excess of \$445,000,000, not one cent of which was derived from taxes on real estate.\* The aggregate of annual taxation by States, counties, cities, municipalities, and the District of Columbia for the same year is estimated by reputable authorities to have been about \$400,000,000, of which at least one fifth was assessed or was collected from personal property. If real estate paid all the State taxes, personal property therefore would still be paying all the United States Government taxes, or a large excess of its equitable share of any or all national taxation. A claim that any personal property owner is justified in protecting himself against such extortion in any and every legal way has much, therefore, to be said in its favour. When such protection can not be effected legally, he has only to leave the State for others that are not extortionate oppressors of capital. But who can not perceive on reflection that personal property (capital) must be largely used by its owners and at fair rates at their residence; and that the home of such capital will show the benefit in increased local business, increased population, and increased value of real estate by its use? Why, then, so much overrighteous talk of personal property owners dodging taxation?

Logical and ingenious as have been the arguments in opposition to the legal exemption of personal property

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\* Real estate pays no Federal Government tax.

from taxation, the citation and consideration of the undisputed experience of all countries, people, and ages are all that is necessary to refute and disprove them. There was a time when nearly all men believed and taught that the world was flat, and when the few who lisped to the contrary exposed themselves to a charge of religious heresy and punishment. But a comparatively short navigation experience effectually put an end to all controversy on this subject; and it is doubtless only a question of time when personal property will be exempt from governmental taxation, because no system has ever been devised, or is likely to be, which will enable a state to tax it with any approach to uniformity and equity.

#### ORIGIN AND HISTORY OF THE GENERAL PROPERTY TAX.

—The idea that in order to tax equitably it is necessary to assess everything capable of resulting in the obtaining of revenue is not original with the American people. Its inception dates back to the dawn of civilization, and its development may be regarded as in the nature of an economic evolution. In the incipient stages of society, as already pointed out, property consisted exclusively of things tangible and visible—lands, buildings, cattle, slaves, agricultural products, household effects, and implements—and what was exacted by rulers or chiefs of their subjects was arbitrary proportions of such kinds of property or of personal service, and was not in any proper sense taxation, but tribute. For thousands of years there were no credits or material evidences of indebtedness, as there are none at the present time among barbarians or half-civilized people; for a knowledge of letters, of the art of writing, and a somewhat durable and portable material to write upon were essential prerequisites for their existence, the earliest evidence of the recognition of anything like a mortgage being the inscriptions on certain clay tablets excavated from the ruins of the ancient cities of Babylon and Assyria, which were evidently the highest results of long and slowly developing civilization. In fact, in the early stages of society there was no important form of capital other than landed property and the instrumentalities, including slaves, for its cultivation, and so far as the system for obtaining revenue for the rulers or state merited the name of taxation, it was practically a “land” tax.

As civilization advanced, slavery gradually broke down; trade or traffic between individuals or adjacent communities extended and became commerce; free labour appeared; capital developed and multiplied the forms of visible, tangible property. Then the system of obtaining revenue began to have the characteristics of a general property tax; and as the coincidence of great value with small bulk in some forms of tangible, visible property favoured concealment, some methods of obtaining revenue from property other than mere inspection became necessary, and were obtained by the Romans in the latter days of their empire by endowing their assessors and taxgatherers (as before shown) with the power to administer torture to unwilling taxpayers, a method that was followed and perpetuated until within a very recent period by the rulers of most Asiatic countries; and in later days, when credits came into existence and extensive use, and titles to property and evidences of indebtedness were regarded as property, although intangible and invisible, a method for discovering and assessing the same, as approximate to actual torture as a higher civilization would sanction, was everywhere adopted.

And how such methods continue to exist and their practice be regarded with favour in states and communities claiming to be in the highest degree civilized and enlightened, finds proof and illustration in the following circumstance: In 1874 the Legislature of Massachusetts created a commission of three persons to inquire into the expediency of amending the laws of that State in respect to taxation, and placed at its head the chairman of the Board of Assessors of the city of Boston, a gentleman long identified with, if not the originator of, the idea of making an arbitrary, irresponsible "dooming chamber" an essential feature of tax administration. At the outset this commission was evidently impressed with the necessity of vindicating the "infinitesimal" or "general property" tax system, then and at the present time especially favoured and fully exemplified in their State. And they set about it in the following manner: with the Declaration of Independence before them, maintaining it to be in the nature of a self-evident truth that "all men are endowed by their Creator with certain inalienable rights," and "that among these are life, liberty, and the pursuit of happiness," the

commission gravely announced that "*the individual person*" (in Massachusetts) "*has no individual rights except that to his own righteousness,*" thus laying a sure foundation in justification for a recurrence in Massachusetts to the torture tax system of the ancient Romans if its tax administrators should consider it expedient.

After the dissolution of the Roman Empire and the subsequent reconstruction, as it were, of government and society in Europe during the early feudal period, and when land was practically the only form of wealth, the payments exacted for the support of the governing powers—kings, barons, knights, etc.—were essentially and almost exclusively in the nature of land taxes; and the terms "*danegeld*," a charge on lands at so much per hide, or an area of about one hundred acres; "*scutage*," a charge on tenants in lieu of military service; "*carucage*," a charge on "plough lands"; "*talliage*" (from the French *tailer*, to cut off), a charge on the tenants of royal manors, and the like were designations of the different forms of such assessments at different periods. As civilization advanced and was accompanied, as at a more primitive period, with an increase in the forms of personal property, a combination of taxes on land and movables, or a general property tax system, developed and was adopted by all the nations of western Europe with all the despotic adjuncts which seemed necessary to make its enforcement successful. The ultimate result of such a system was what might have been anticipated. From a very early period it occasioned great popular dissatisfaction. In Milan, Italy, as early as 1208, it was enforced with such severity "that the assessment book was known as the *libra del dolore*." In Florence it became so honeycombed with abuses and the load of taxation fell with such crushing force on the small owners of property that imminent popular revolution and disorder compelled its essential modification. As wealth increased, evasions of the tax increased in a greater proportion in every community, leaving the burden of the system, as now in the United States, on that class of the population—mainly the agricultural—that are least able to bear it. Sir Robert Cecil stated in 1592 that there were not five men in London assessed on their goods at two hundred pounds (one thousand dollars); and Sir Walter Raleigh stated

in 1601 that "the poor man" (in England) "pays as much as the rich." In Florence in 1495 only fifty-two persons paid the tax on trade capital, although the amount of such capital must have been immense. Marshal Vauban, of France, who wrote on taxation about 1700, stated that the *taille personnelle* was assessed only on the poorest classes. The result has been that as the difficulty of assessing visible personal property and the impossibility of reaching invisible and intangible personalty became apparent, the tax was gradually modified, and finally abolished in all European countries, except possibly Switzerland and Holland, where its nature has very little of its original and typical character. One of the first acts of the French National Assembly in 1789 was to abolish it entirely. A provision for taxing personal property under a nominal land tax continued to exist on the statute book until 1833, when, through constant exemptions and systematic evasions, the annual revenue accruing from the same had run down to the sum of eight hundred and twenty-three pounds (four thousand one hundred and fifteen dollars). It is also interesting to note that the people of Europe have been so long exempted from a general property tax that their leading writers on economic or fiscal subjects rarely discuss it or even seem to have any knowledge of its characteristics or historical experience.\*

The United States is the only civilized country that gives no heed to the world's uniform record of experience, and thinks it desirable to tax both property itself and its shadow.

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\* To those desirous of a fuller record of the historical experience of the general property tax than has been here given, reference is made to an exceedingly interesting and valuable essay on the subject by Prof. E. R. A. Seligman, of Columbia University, published in *Essays on Taxation*, New York, 1895.

## CHAPTER XX.

### DOUBLE TAXATION.

ONE of the inevitable characteristics of a "general property tax" is the opportunity afforded for inflicting double taxation—i. e., taxation at one and the same time on the same person or property, or taxation of the same property a second time in the same year—an opportunity which the believers in this system vigorously defend, and its administrators as a rule gladly take advantage of to practically enforce. These opportunities exist mainly through two assumptions, neither of which is warranted by either reason or justice, and is alike antagonistic to any equitable and intelligent system of taxation: the *first*, in respect to the *situs* of personal property, and the *second*, as to origin and nature of property; and to these, in the above order, attention is next invited.

Personal property for purposes of taxation is *popularly* divided into two classes—namely, things movable, tangible, and visible, and things wanting in corporality or bodily presence, and therefore, as a rule, intangible and invisible. To the former has been given the general name of "chattels," and to the latter that of "credits"; under which latter name or title are included not only book accounts, bills payable, promissory notes, bonds, mortgages, deeds, bank deposits, certificates of indebtedness, and the like, but also shares of corporate stock, and possibly shares in any partnership. Adopting a popular theory, that credits are property, their aggregate value in all civilized countries can not, probably, be reasonably estimated at less than one half of the aggregate value of all chattels and real estate.

SITUS OF PERSONAL PROPERTY.—As has been already pointed out, it is in the nature of an economic axiom and a fundamental legal principle that the power of every state

to tax must be exclusively limited to subjects within its territory and legal jurisdiction. This economic axiom and legal principle is recognised in nearly all countries claiming to be civilized; the principal exceptions being in the States of the Federal Union, where it is violated in respect to both theory and practice—more especially in the State of Massachusetts, the statutes of which define personal estate for purposes of taxation so as to include “goods, chattels, money, and effects, wherever they are; ships, public stocks and securities, stocks in turnpikes, bridges, and moneyed corporations, *within or without the State.*” Thus, for example, if a resident of Massachusetts owns a cow which is bodily in another State, that cow is properly taxed in the State where the animal is; but Massachusetts, in virtue of the residence of the owner within her territory, imposes upon him a second tax for the same cow. Again, owners of shares in corporations chartered and located in Massachusetts are taxed through the corporation, and their shares are free from any further taxation. But if the same persons are shareholders in corporations created and established by other States, and the real and personal property of which are fully taxed where situated, they are subject to a second tax in Massachusetts on the assumed local value of the interest of their citizens in such extra-territorial corporations.

Under this system, moreover, the same property may be, and often actually is, subjected to not merely double but triple taxation, which sometimes practically amounts to confiscation. Thus personal property belonging to a citizen of Massachusetts, but located in Chicago, would be properly taxable there, because within the territory and under the protection of the taxing power. It would, however, be taxable to the owner in Massachusetts because of his personal residence in that State; and the owner would also be liable to taxation in Massachusetts by reason of his income from the same property. The following case of actual and comparatively recent experience constitutes both proof and illustration of the accuracy of this statement: A lady of a Western State, for the sake of availing herself of certain educational advantages, removed to a town in Massachusetts near Boston, and benefited the town by building a fine residence therein. Her property, which was

held by a trustee in Indiana, was taxed to him by reason of his legal holding in that State. The property itself, mainly in another State, was taxed there, and properly, by reason of its location; but at the end of her first year's residence the lady was horrified to learn that a third tax on her income was demanded of her by the tax laws of Massachusetts. "And this," the person communicating these facts adds, "will, if enforced, be a decree of my personal banishment from the State as effectual as that which the State formerly launched against Roger Williams and the Quakers." Can any one doubt that human nature, as ordinarily constituted, will protest against, and successfully evade such laws? Would it not be well in discussing this subject to mention also that it was a question of taxation that gave liberty to the American colonies, and that the principle that the people of Boston and their ministers once mainly relied upon to justify their destruction of imported tea, which they regarded as unjustly taxed by even a small amount, was "that resistance to tyranny was obedience to God"?

The claim or argument, however, with the advocates of such an unjust system now set up in its defence is not a theological one, but that personal property (more especially what is termed in law *choses in action*; or credits, titles, notes, bonds, mortgages, which are in their nature incorporeal, and therefore invisible and intangible) has no *situs* away from the person or residence of the owner, but is deemed to be present with him at the place of his domicile.

This rule or fiction of law originated, according to Savigny, in Rome, and acquired the designation of "*mobilia personam sequuntur*"; but its applicability to property was never held to extend beyond Roman territory. Subsequently it became a device of international comity, which the Supreme Court of Vermont (*Catlin vs. Hall*, 12 Vermont, 152) has declared was subsequently "adopted from considerations of general convenience and policy, and for the benefit of commerce"; and which, according to every principle of common sense and equity, was never invented with a view of its being used as a rule to govern and define the application and scope of taxation, or was intended to have any other meaning than that for the purpose of the sale, distribution, and other disposition of property any



act, agreement, or authority which is sufficient in law where the owner resides shall pass the property in the place where the property is; and more especially to facilitate the distribution of decedents' estates, by enabling parties to dispose of their property without embarrassment from their ignorance of the laws of the country where it is situated.\*

How comparatively recent, moreover, has been the extra-territorial application of the rule or principle under consideration to taxation, is shown by the fact that the first English colonists and lawmakers who came to America do not appear to have brought with them any of the narrow and illogical views which have characterized their descendants. Thus, for example, one of the earliest laws of the Massachusetts colony reads as follows: "*No man shall be rated here (Massachusetts) for any estate or revenue he hath in England, or in any forreine partes, till it be transported thither.*" (*Massachusetts Historical Society Collections*, vols. vii and viii, page 213.) And in the first provincial codes of Pennsylvania especial care was taken to confine taxation to land, and a very few articles of personal property of a visible character, as slaves, horses, and cattle, and to exempt from taxation debts, accounts, merchandise,† and all other items susceptible of concealment,

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\* "No fiction," says Blackstone, "shall extend to work an injury; its proper operation being to prevent a mischief, or remedy an inconvenience, which might result from the general rule of law." At any attempt to misapply a fiction, it falls within, and is terminated by, that other authoritative maxim of logic and the common law, *cessante ratione legis, cessat ipsa lex*. Another great authority in law, Lord Mansfield, says: "Fictions of law hold only in respect of the ends and purposes for which they were invented; when they are urged to an intent and purpose not within the reason and policy of the fiction, the other party may show the truth."

† In a report of the law committee of the Common Council of the city of Philadelphia, submitted February 16, 1871, we find the following historical review of the tax laws of Philadelphia, under the government of William Penn and his successors in the colonial government:

"These laws were framed to avoid repeating errors (in respect to the taxation of personal property) which had been proved by long experience in Great Britain and the Continental countries to be inquisitorial in their nature, and by concealment, evasion, and perjury demoralizing to the people. We find the Provincial Council (1683) first determining that 'a publick tax on land ought

and which would necessitate inquisitorial methods for assessment. And it was not until 1844, when the State had become financially embarrassed by large expenditures, that any change was made in such system. But in later days, when laws came to be made by legislators who could not conceive that anything more was involved in taxation than the raising of a given amount of money, the discriminating rule in respect to the *situs* of real and personal property was generally adopted and has resulted in the before-men-

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to be raised to defray the publick charge,' and the enactment of 1700, fixing county rates and levies (which law was not enrolled), is believed to have been not larger in the subjects of county rates than in the act of 1724, which were real estate, horses, cattle, sheep, negroes, and a poll tax. It will be noticed that the personal estate here enumerated was visible property not susceptible of concealment, and that debts, accounts, merchandise, and ships are nowhere mentioned. In the several enactments that followed in 1795, 1799, and 1834, the subjects of county levy were substantially the same, sheep and slaves being omitted in the last act, and officers added to the last two, and it was not until 1844, a period when the State, by large expenditures, had become embarrassed, that, by the act of 29th day of April, 1844, mortgages, money owing by solvent debtors, stocks, household furniture, public loans, watches, etc., were made taxable for county purposes. The attempted enforcement of this act was so injurious to the people, by driving capital and industrial establishments from the State, and so evaded in returns, that by common consent the law remained on the statute book a dead letter until the consolidation of the city.

"At that time (1854) the question was again discussed, and although the councils of the city had the power to impose the tax rate upon all the subjects of taxation, in the thirty-second section of the act of 1844 we find, by the first ordinances, they limited the levy to real estate, furniture, horses, cattle, and pleasure carriages, and so continued until 1864, when an act was passed empowering the city to levy taxes on all the subjects of taxation contained in that section of the act of 1844, a power which they possessed before, but had not exercised.

"Since that time the authority of the city to levy a tax on mortgages, stocks of Pennsylvania corporations, and occupations, has been repealed. In considering the enlargement of the subjects of levy in this city, the fact must not be lost sight of that the State does not impose any tax on real estate for State purposes, but derives all its revenue from corporation stocks and loans, mercantile license, tavern licenses, collateral inheritance, etc., and it is estimated that of the gross receipts for 1870 (\$8,336,603) more than two fifths of the amount (\$2,600,000) was derived from the property and business interests of the citizens of this city."

tioned absurdities. Another involved absurdity is that those States which adopt in their systems of taxation the rule of taxing property beyond their sovereignty or territorial jurisdiction, by reason of the possession of its owner, do not follow to a logical conclusion the principle they have adopted; for they do not hold that real estate, as well as personal property, follows the domicile of its owner for taxation. But for this distinction no good reasons can be given, although pretexts, claiming to be reasons, may. One claim, however, is obviously as good as another. A robber who should draw romantic distinctions between watches and purses would fail in business. If we are to be robbers in practice, let us, at least, secure some grace by honesty in our professions, and admit that what we thus take is not a tax received as the just recompense of a benefit conferred, *but a compulsory levy, having its cause in our greed and its justification in our power*; and as these reasons are as good for a large levy as a small one, and the whole of a man's estate is greater than its part, why not take the whole? Still further, if it is right to tax a man in Massachusetts, who has come for a lengthened stay from another State or a foreign country, for the property he has left behind, why not the man who has come for a week? If we are to do business upon the principle that "might makes right," would it not be a brilliant stroke to station ourselves at all the avenues of ingress to a State, and cry "Stand and deliver!" to the passengers? From the above citations and arguments, the conclusion would seem to be inevitable that when a State assesses property situated beyond its territory and jurisdiction, and which its laws and processes are not competent or able to either reach or protect, or assesses one of its own citizens in respect to such property, the act has no claim to be regarded as taxation, but is simply *arbitrary taking*, in no respect different in principle from confiscation.

It will also be interesting here to recall some of the antecedents of this fiction of law, that personal property, irrespective of its *situs*, follows the owner for the purpose of taxation. Its prototype was the ancient *taille*, or tax of servitude, imposed on persons originally bondmen, or on all persons who held *in farm*, or *lease*, or resided on lands of the suzerain, and from which proprietors or suzerains

of the land were exempt. And as no vassal could at will divest himself of servitude or allegiance to his lord or suzerain, so the obligation to pay taxes always remained upon him as a personal servitude, whatever might be the location of his property. In other words, the condition of the masses all over Europe during the middle ages was not unlike the condition of the slaves in the United States previous to emancipation. They (the slaves) had property in their possession, and spoke of themselves as owners of property, but in reality their property followed the condition of the servitude of their persons, and both persons and property belonged equally to the masters. [The *taille*, furthermore, as a badge of servitude, was supposed to dishonour whoever was subject to it, and degrade him, not only below the rank of a gentleman, but that of a burgher, or inhabitant of a borough or town; and "no gentleman, or even any burgher," says Adam Smith, "who has stock, will submit to this degradation."] Now, the idea embodied in the word servitude is an obligation to render service, irrespective of or without compensation; and the idea upon which the taxation of personal property in this country has been based is, that the property owes a servitude to the State where the owner resides, irrespective of its actual location, in virtue of the obligation which its owner, as a citizen, may owe to the State by reason of the protection which the State gives him in respect to his person.

Again, in old times, the division of property into real and personal was wholly unknown; and under the common law all property was classed as lands, tenements, hereditaments, and goods and chattels. "In the course of time, however, leases of land for a term of years were classed as chattels, and were distinguished as *chattels real*; while other chattels, which did not savour of lands, were called *chattels personal*, 'because,' says Lord Coke, 'for the most part they belong to the person of a man, or else for that, they are to be recovered by personal actions.' And Blackstone tells us that 'chattels personal are property, and, strictly speaking, things movable, which may be annexed to, or attendant on, the person of the owner, and carried about with him from one part of the world to another'; and as instances he mentions money, jewelry, garments. Personal property, in fact, consisted almost entirely of

such things as could be, and actually were, carried about with the person of the owner, or could be easily secreted. And Blackstone also tells us that the amount of the personal estate of our ancestors was so trifling that they entertained a very low and contemptuous opinion of it; and that our 'ancient law books do not, therefore, often condescend to regulate this species of property.' Nothing of an incorporeal nature, as credits, bonds, and mortgages, certificates of stock, was anciently comprehended within the class of personal chattels, and in fact there were few or no such instrumentalities for representing or facilitating the exchanges of property. It was otherwise as to lands or real property, as to which 'incorporeal hereditaments' occupied a conspicuous place from the earliest times. Such was personal property in the early history of our laws. It was of comparatively small importance, and its laws were few and simple; while real property, being of a fixed and permanent nature, was regarded as immeasurably more valuable, and was governed by laws of its own, of the most intricate and abstruse character. And because of the feudal tenure by which lands were held arose the notion, which became a fiction of the law, that property, merely personal, always attended the person of its owner; while lands, tenements, and hereditaments, being fixed and immovable, and of infinitely more consideration, were held, from their very nature, as well as from motives of political policy, to have a *situs* of their own, from which they derived their laws and incidents, wholly regardless of the domicile of the owner. Growing out of the same reasons, it was also the prevailing opinion that, while immovables were exclusively governed by the law of locality, movables were controlled, according to the same maxim, by the law of the domicile of the owner, and not by that of its *situs*." In the changed condition of wealth and property, such a fiction, however suitable and useful in primitive times, would now, in many cases, work the greatest injustice, and impair the supremacy which every government should maintain over everything within its territory, both on the ground of public expediency and the private interests of its citizens. And, according to Wharton (*Treatise on the Conflict of Laws*, 1872), this fiction of law has been universally abandoned upon the

continent of Europe, except in cases as to rights in respect to personalty which sprang from marriage and succession, and would not, furthermore, in Europe, find a place in any discussion of the principles of taxation, except possibly in a review of curious tax experiences, and for the reason that nowhere, except in the United States, is there any system of extra-territorial taxation, or any tolerance given to the ideas upon which it is founded.

This question of extra-territorial taxation has been raised repeatedly before the highest courts of the United States, and its *illegality* in respect to *visible, tangible property* is believed to have been in every instance affirmed.

Thus in the State of New York, up to the years 1861-'62, the rule of assessment of personal property appears to have been in accordance with that now recognised in Massachusetts—viz., that it follows the owner under all circumstances; but in that year a case of much importance was carried up to its Court of Appeals under the following circumstances: One Hoyt was taxed in the city of New York for personal property, and resisted the taxation on the ground that, although he had personal property outside of the State, he had none within the State in excess of his just debts and liabilities; the property in question without the State being capital employed in business in New Orleans, and farm stock and household furniture in New Jersey, each taxable by local law in the States where situated. The Court of Appeals decided the assessment to be illegal, and held (Comstock, C. J.) that the property was actually situated in other States, in other sovereignties, protected by their laws and taxable there, and therefore it ought not to be subject to a second taxation in New York.

The court also, in rendering the decision, used the following language: "There seems to be no place for the fiction" (that personal property follows the owner) "in a well-adjusted system of taxation. In such a system a fundamental requisite is that it be harmonious, but harmony does not exist unless the taxing power is exerted with reference exclusively either to the *situs* of the property or to the residence of the owner. Both rules can not obtain, unless we impute inconsistency to the law and oppression to the taxing power. Whichever of these rules

we find to be the true one, whichever we find to be founded in justice and the reason of the thing, it necessarily excludes the other; because we ought to suppose, indeed, we are bound to assume, that other States and governments have adopted the same rule. If, then, proceeding on the true principles of taxation, we subject to its burdens all goods and chattels actually within our jurisdiction without regard to the owner's domicile, it must be understood that the same rule prevail everywhere. If we proceed in the opposite rule, and impose the tax on account of the domicile, without regard to the actual *situs*, while the same property is taxed in another sovereignty by reason of its *situs* there, we necessarily subject the citizen to a double taxation, and for this no sound reason can be given."

In further support of its position the court made use of the following illustration: "A citizen, a resident of Massachusetts, may own a farm in one of the counties of this State, and large wealth belonging to him may be invested in cattle, in sheep or horses, which graze the fields, or are visible to the eyes of the taxing power. Now, these goods and chattels have an actual *situs* as distinctly as the farm itself. Putting the inquiry, therefore, with reference to both, 'Are they real estate, and personal?' so as to be subject to taxation under that definition. It seems that but one answer can be given to this question, and that answer must be according to the actual truth of the case. If we take the fiction instead of the truth, then the *situs* of these chattels is in Massachusetts, and they are not within this State. The statute means one thing or the other; it can not have double or inconsistent interpretations; and as this is impossible, so we can not, under and according to the statute, tax the citizen of Massachusetts with respect to his chattels here, and at the same time tax the citizen of New York in respect to his chattels having an actual *situs* there. *In both cases the property must be within the State, or there is no right to tax at all.*"

Since this decision by its highest court, personal property, though owned in the State of New York, is not taxable to its owner there, provided it is capable of and has a permanent *situs* away from the owner or his domicile.

The United States Supreme Court (*Hayes vs. Pacific Mail Company*, 17 Howard, 713) decided that the *situs*



of a vessel for State taxation is only at the port where it is registered, and not where it may happen to be.

In the case of *The City of New Albany vs. Meekin* (3 Indiana Reports, 481), the defendant was a resident of New Albany, and was assessed for personal property in respect to a steamboat enrolled at Louisville, Kentucky, and which touched only occasionally at New Albany. It was held that the tax was illegal, the Supreme Court observing that "the only question we have to consider is whether the boat or the defendant's share is within the city."

It is also an interesting circumstance that this legal controversy concerning the *situs* of a ship for the purpose of taxation has almost its exact counterpart in the records of English law; case after case having formerly come up before the English courts in which the question involved was, Shall the ship or her owners be taxed at the place of the vessel's registry, or at the domicile of her proprietors? The ultimate decision was, that the only *situs* of a vessel for taxation is the port of her registry, and this decision was recognised in practice until Parliament and the people arrived at the conclusion that it was for the interest of the nation that ships should no longer be taxed directly in any manner.

The United States Supreme Court, in the case of the *Northern Central Railroad vs. Jackson* (7 Wallace, 262), also affirmed the principle that two States *can not tax at the same time the same property, nor can a State tax property and interest lying beyond her jurisdiction*. The railroad corporation in question, extending from Baltimore in Maryland to Sunbury in Pennsylvania, was the result of the consolidation of four railroad companies, one incorporated by the State of Maryland and three by the State of Pennsylvania. The latter State imposed a tax of three mills per dollar of the principal of each bond issued by said road, which tax the company, at their office in Baltimore, deducted from the coupons of the bonds of said consolidated road held by Jackson, an alien, resident in Ireland. The court, by Mr. Justice Nelson, decided adversely to the tax, on the ground that the bonds were issued upon the credit of the line of the road, a portion of which was within the jurisdiction of the State of Maryland, and



that the security, bound and pledged for the payment of the bonds and of the interest on them, embraces the Maryland portion of the road equally with that portion situated in the State of Pennsylvania; respecting which condition of affairs the court used the following language:

"It is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that to the extent of this Maryland portion of the road she is taxing property and interest beyond her jurisdiction. Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them. This is too apparent to require argument. The consequence, if permitted, would be double taxation of the bondholder, and its effect is readily seen. Thus a tax of three mills per dollar of the principal, at an interest of six per centum, payable semiannually, is ten per centum per annum of the interest; a tax, therefore, by each State, at this rate, amounts to an annual reduction from the coupons of twenty per centum; and if this consolidation of the line of the road had extended into New York or Ohio, or into both, the deduction would have been thirty or forty. *If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.* Our conclusion is, that to permit the deduction of the tax from the coupons in question would be giving effect to the acts of the Pennsylvania Legislature upon *property and interests lying beyond her jurisdiction.*"

Again, the national (United States) bank act acknowledges, and the courts of the United States have so held, that a bank has a *situs* and its shares a *situs* where the bank is located, and not where the stockholders reside. The national bank act, therefore, discards the usual State principle of taxation, that personal property follows the owner.

A debt incurred for stock in a corporation has recently (1897) been held by the Appellate Supreme Court of New York as non-taxable, because the assets represented by the stocks are assessed and taxed.

But are credits, in any or all of the various forms in which they are exemplified, property? This question brings us face to face with another of those curious anomalies of opinion and practice that characterize this whole subject of taxation.

In most of the States of the Federal Union credits are generally regarded as property, and are made the subject of taxation at the residence or domicile of their owner, and are held to embrace all debts due from solvent debtors, whether on account, contract, note, bond, or mortgage, and stocks in moneyed corporations, irrespective of the place where such securities may be at the time the assessment shall be made. In States, however, like New York, which reject the assumption that the *situs* of *movable, visible*, personal property for taxation follows the owner irrespective of its actual location, and accept the decision of its own courts, that the *situs* of such property for taxation is *where it is*, and independent of the domicile of its owner, the opposite rule is held to apply to credits.

On the other hand, in all other countries of high civilization, credits are not regarded as property in the sense of an actuality, and are not subjected to direct taxation. In France, which is at the present encumbered with a greater national debt than has ever before been borne by any nation, and where almost every expedient for raising revenue to defray its extraordinary national expenditures has been resorted to, no attempt or even a proposition has been made to tax credits. It is, therefore, of the first importance that the American public, and especially that portion of it that enacts tax laws, shall have a clearer and more correct idea of the nature of property than it now possesses; and that there shall be eliminated from all such laws the idea that extensively prevails in the United States, but in no other country, that "nothing" can be "something," if a statute will only so provide.

That there is some warrant and defence for such an idea is to be found in the fact that there is not a unity of opinion among economists on this subject; and that in common parlance and dictionary use the term "property" is made applicable to the qualities, rights, and titles of "things" equally with the things themselves. Thus, according to the ancient though still existing law of Scotland, what is termed "real property" in England is termed "heritable rights" in Scotland, and what is termed "personal property" in England is termed "movable rights" in Scotland. Ancient usage is, however, no warrant for the continued use of definitions not applicable to new

conditions, and the acceptance of which as authority for conduct is provocative of immorality, injustice, and unsound fiscal policy. Prof. H. Dunning Macleod, a distinguished English economist, who has many adherents, has vigorously advanced the idea that everything that can be bought and sold is property, and assigns to the old Greek philosopher Aristotle the honour of its original conception; but without mentioning that at the period at which Aristotle lived there was practically nothing bought or sold except things tangible and visible, and that credits were practically unknown.

Attractive as this idea may be in theory, it needs but practical application to demonstrate its absurdity. Thus, when the Church sold "absolution" from sin, did the buyer, to quote from old Wycliffe, "have property in ghostly goods, in which no material or property may be regarded as inhering"? Service, again, is bought and sold; but when its purchase, as in the case of the hire of incompetent or dishonest persons, results in the impairment or complete waste or destruction of property, is it entitled to be regarded as property? When a ticket to a theatre or concert is sold and bought, can the temporary right to a seat, or the brief sense of pleasure which the purchaser receives in return, and which he can not perpetuate without renewed buying, and can not transfer to another person, be entitled to be called property? "When socialists and communists," says Professor Macleod, "wish to destroy property, it is not the material things they wish to destroy, but the exclusive right which private persons have in them." If this assertion is warranted, the question is pertinent, Why is it, when socialists or communists have the opportunity to destroy property, they rarely proceed against property over which private persons have exclusive control—like private dwellings—but rather against monuments or buildings, and constructions which are acknowledged to be public as respects use and control? Again, Professor Macleod further holds that not only is the right to a thing, which is not at the time of sale in existence, but is to be acquired in the future, property; but also that *a mere promise* to deliver a commodity is property of the same general nature as money and an actuality.

**THE FOREIGN-HELD BOND CASE: A NEW CHAPTER OF PROGRESS.**—Any review of this general subject of “double taxation” would be imperfect that failed to particularly call attention to a decision of the United States Supreme Court which, although of the first importance as touching the correct administration of a free and intelligent government, has thus far attracted little attention, even among members of the American bar.

The subject in question, furthermore, illustrates the historical principle that changes in free governments have more often been effected through the decisions of their highest courts than by direct legislation. Thus it is known to all who have examined the theory and practice of local taxation in the United States, that a hundred years ago or less, the lawmakers of England entertained very generally the same opinion in regard to this subject which is yet popularly accepted in this country, namely, that in order to secure exact justice and equality it is essential to attempt to subject all property of the taxpayer—real and personal, tangible and intangible, visible and invisible—to one uniform rate of valuation and assessment; although it must then, as now, have been evident to every one on reflection that, in order to attempt to do this, it would be necessary to endow the assessors with more than mortal powers of perception, so as to enable them to see what was invisible, and measure what was intangible and incorporeal (debts and credits, for example); and that, in default thereof, any practical application of this theory must result in rank absurdity and injustice. And yet it is curious to note that the change in English taxation, when it came about, was not due to any such process of reasoning on the part of the people, or to any positive sentiment on the part of the state, but rather to a series of legal decisions by its courts, which gradually undermined the whole system of British local tax assessment, until it tumbled down, as it were, imperceptibly, and gradually became replaced, from necessity, by a theory which approximated more closely to the principles of sound political economy and the dictates of common sense.

Thus, one of the first of the old-time maxims which gave way under these decisions was the fiction of law that all property for the purpose of taxation followed the per-

son or domicile of the owner (in virtue of which real estate was once taxed, under the British system, where the owner resided, in place of where the property was situated, used, and protected), and its replacement by the more rational principle that for all purposes of assessment the *situs* of property is where the property actually is; while other decisions of a similar character, following one another by intervals of years, forbade the taxation, for local purposes, of all evidences of national indebtedness, or "consols"; affirmed the *situs* of a vessel for taxation to be at the port of its registry, irrespective of the domicile of the owner; and declared that all negotiable instruments are chattels personal, and the like; until the British system of local taxation, like the French, Belgian, and German, has come to be based on the assessment of comparatively few objects, and the avoidance in assessment, to the greatest possible extent, of all personal inquisition and arbitrary treatment.

A case in question determining definitely, as it would appear, the hitherto questionable *situs* for State taxation of all that large class of personal property comprised under the general term "*negotiable instruments*"—i. e., State, municipal, railroad, and other corporate bonds, circulating notes of banking institutions, promissory notes payable to bearer, etc.—is reported in the fifteenth volume of Wallace, under the title of *State Tax on Foreign-held Bonds*, and in brief may be thus stated:

The State of Pennsylvania, by a law passed in 1868, required the officers of every company, except banks or savings institutions, incorporated and doing business in that State, to retain a tax of "five per cent" upon every dollar of interest paid by such company to its bondholders or other creditors, and to pay over the same to the State Treasurer for the use of the Commonwealth. The plaintiff in this specific case—the Cleveland, Painesville, and Ashtabula Railroad Company—denied the legality of the tax, and, appealing to the State courts, alleged, among other things, the following in support of its position:

"That the greater portion of the bonds of the company having been issued upon loans made and payable out of the State to non-residents of Pennsylvania, citizens of other States, and being held by them, the act in question, in authorizing the tax upon the interest stipulated in the bonds,

so far as it applied to the bonds thus issued and held, impaired the obligation of the contracts between the bondholders and the company, and was therefore repugnant to the Constitution of the United States and void."

The several State courts of Pennsylvania, however, affirmed the validity of the tax; but the case having then been carried on writ of error to the Supreme Court of the United States, the latter in December, 1873, reversed the judgment of the State courts, and decided in favour of the plaintiff; the opinions of the court, as expressed by Mr. Justice Field, being substantially as follows:

I. *The power of taxation of a State is limited to persons, property, and business within her jurisdiction; all taxation must relate to one of these subjects.*

II. *The tax laws of a State can have no extra-territorial operation; nor can any law of a State inconsistent with the terms of a contract made with and payable to parties out of the State have any effect upon the contract while it is in the hands of such parties or other non-residents of the State.*

III. *Bonds issued by a railroad company are property in the hands of the holders, and when held by non-residents of the State in which the company was incorporated are property beyond the jurisdiction of the State.*

It will be observed under the *third* head (the language above quoted being the official prefatory syllabus of the decision) that the court lays down the rule that negotiable bonds are property, not in the place where issued, as was claimed by the authorities of Pennsylvania, and not at the domicile of the owner irrespective of actual presence, as was generally claimed by the State tax officials, *but in the hands of the holders at the place where the bonds are actually situated*, whether the holders be actual, *bona fide* owners or otherwise. And the following is the exact language in which the decision was expressed:

"It is undoubtedly true that the actual *situs* of personal property which has a visible, tangible existence, and not the domicile of its owner, will in many cases determine the State in which it may be taxed. The same theory (i. e., the actual *situs* determinative) is true of public securities consisting of State bonds, and bonds of municipal bodies, and circulating notes of banking institutions; the former,

by general usage, have acquired the character of, and are treated as, property in the place *where they are found, though removed from the domicile of the owner*; and the latter are treated and pass as money wherever they are."

If, now, there is any meaning in words, and if the authority of the United States Supreme Court in defining the powers and jurisdiction of the States is as absolute as is generally supposed, it is clearly evident that the first clause of the above-quoted opinion effectually establishes the unconstitutionality and illegality of the theory and practice of Massachusetts and other States, namely, that in virtue of jurisdiction over the person and domicile a State has a right to tax so much of the visible, tangible, personal property of its citizens—i. e., horses, cattle, stocks of goods, money, bullion, and the like—as may be *without its territory and jurisdiction*: the law of Massachusetts, for example, defining personal property for the purpose of taxation to be "goods, chattels, money, and effects, wherever they are." \*

If it be objected that the court, by using the expression "in many cases," does not make its rule absolute and unqualified, the answer is that the exceptions, when understood, will be found to be of a character which proves and strengthens the rule, rather than antagonizes it. Thus, as has been already noticed, the United States Supreme Court has decided that the *situs* for taxation of vessels which move about on the high seas or navigable inland waters must be at the home port where they are owned and registered; and it also stands to reason that the *situs* of such property as railroad cars, or other chattels which as a condition of using are perpetually *in transitu*, in order to avoid duplicate taxation and conflicting statutes, must be taxed, if taxed at all, under the head of the franchise of the company or owners. But in all cases where fixity or permanence are conditions of using, it may be unquestion-

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\* In Massachusetts, within the last half century, a citizen has been threatened with arrest and imprisonment for objecting to pay taxes in that State on goods located in a store in San Francisco and paying taxes thereon in the State of California. Bullion in the vaults of the Bank of England has also been taxed to citizens of Massachusetts as personal property within a comparatively recent period.



ably affirmed that the court intended to make no exception in its rule for determining where visible, tangible, personal property may be taxed, and where, also, it is of necessity exempted from taxation.

It ought to be superfluous, but in view of existing opinions and practices it is nevertheless expedient to say that the reason of this rule is founded upon a circumstance alike conformable to law and common sense, which is that taxation and protection are correlative terms; or, in other words, according to the political theory of our governments, national and State, and, in fact, of every government claiming to be free, that taxes are the compensation which property pays to the State for protection; or, as Montesquieu, in his Spirit of Laws, has it, and as the United States courts have again and again expressed it, that "the public revenues are a portion that each subject gives of his property in order to secure and enjoy the remainder." When, therefore, a State like Massachusetts assesses property situated beyond its territory and jurisdiction, and which its laws are not competent or able to either reach or to protect, or assesses one of its own citizens in respect to such property, the act has no claim to be regarded as taxation, but is simply arbitrary taking, or confiscation, and a procedure which the United States Supreme Court has, at least in the case under consideration, declared to be unconstitutional, and therefore illegal and unwarranted.

The court having thus affirmed the *situs* for the taxation of personal property which has a visible and tangible existence, has now taken a further step forward, and in the second clause of the opinion above quoted asserts that "the same thing is true of public securities consisting of State bonds, and bonds of municipal bodies, and circulating notes of banking institutions"; namely, that their *situs* for assessment and taxation is wholly irrespective and apart from any whereabouts of the owner or his domicile, but is where the securities actually are. So much, then, is so clear that even the most obstinate of assessors under the present arbitrary system will find it difficult, in respect to the items specified, to interpret the law and rule of action otherwise. But it is to be observed that negotiable railroad bonds are not, in the opinion quoted, specifically mentioned.



That they, however, follow the same law as municipal and State bonds, and were intended by the court to be included in the same category, is, however, obvious, for the following reasons:

1. The subject-matter of the case and of the decision was a railroad bond.

2. The character of a railroad bond as a negotiable instrument is in all respects the same as a State or municipal bond.

3. The reason which undoubtedly led the court (as it must every unprejudiced reader who thinks upon the subject) to the conclusion that State, municipal, and railroad bonds and bank notes follow the same rule, in respect to their *situs* for taxation, as other personal property of acknowledged visible and tangible character is that the property of all such instruments runs with the instrument, wholly irrespective of the residence of the owner, and consequently, in respect to title, passes by delivery. By public securities, also, the court undoubtedly meant all negotiable securities which are payable to the public—that is, to bearer wherever he may be; or, in other words, a public security, from its very nature, is subject to no previous equities between the original parties creating or issuing it, and the sum agreed to be paid is a liquidated and adjusted sum which must be paid to the public—that is, the holder; and the *situs* of such property from necessity follows the instrument to the public, and can be nowhere else than where the instrument actually is. On the other hand, if the instrument was subject to equities, the property might be where the parties creating it or owning it resided. And if this position is not correct, dealings in all such securities, or upon the stock exchange, or in open market would be impracticable; inasmuch as the purchaser would be obliged to institute an investigation as to whether the title for each specific bond vested in the vendor or some other person; and as there is no registration of the transfer of such property, as there is in the case of real estate, the investigation must be practically impossible. So, also, in the case of circulating notes of banking institutions: if their title did not pass by delivery, or, in other words, if their *situs* as property was not under all circumstances accepted as in the hand of the holder, their

use as money would be impossible; and the courts, recognising this principle most fully, have always held that in cases where negotiable instruments or money have been stolen, and in consideration for value received have come into the hands of innocent third parties, the title to such property in the hands of the holders is perfect and irrevocable.

Again, the circumstance that State, municipal, and railroad bonds, and all other strictly negotiable instruments, even warehouse receipts payable to bearer, are subject to attachment by legal process only at the place where they actually are, and without regard to the whereabouts of the owner or his domicile, of itself also clearly defines and limits the *situs* of such property for taxation; for clearly a State which has the power to make a legal attachment operative against a given property has also the power to tax such property; while, on the other hand, a State which through lack of possession and jurisdiction, can not attach a specific property, certainly can not enforce its tax laws against it, or give protection in case its rights or the rights of its owners are violated. And, again, can the right to tax personal property exist in a State from which the property is so confessedly absent that there is neither right, power, nor possibility of passing title to it within the territory of the State by delivery?

That the view thus taken respecting the *situs* of negotiable instruments, and especially of railroad mortgage bonds, for taxation, is in strict conformity with the opinion of the Supreme Court, is also evident from the fact that in summing up the court held that not only was a mortgage bond issued by a railroad chartered by Pennsylvania, and in the hands of a non-resident, property out of the State, and as such beyond the jurisdiction of the taxing power of the State, but also that the State could not tax such property even when owned by a citizen and resident, unless the bond was at the time of assessment actually within the territory of the State. And as this point is a most important one, it is desirable to ask attention to the exact language of the court establishing it.

"We are clear," says Justice Field, "that the tax can not be sustained; that the bonds, being held by non-residents of the State, are only property in their hands, and

that they are thus beyond the jurisdiction of the taxing power of the State. *Even where the bonds are held by residents of the State*, the retention by the company of a portion of the stipulated interest can only be sustained as a mode of collecting a tax *upon that species of property in the State*. *When the property is out of the State, there can be no tax upon it for which interest can be retained*. The tax laws of Pennsylvania can have no extra-territorial operation."

The decision of the United States Supreme Court, of which an analysis has been above given, ought therefore to be regarded as constituting a real chapter of progress in American local taxation; because, by contributing powerfully to break down the present popular system, which, founded on an erroneous and impracticable principle, never has been and never can be executed with justice and efficiency, the time is thereby hastened when a better system shall be accepted and inaugurated. The logic of this decision, moreover, will not only pervade courts—State and Federal—but will be felt in legislative halls, and be impressed upon the conscience of the people. The court itself, in referring to the tax under consideration, says with great point and truth: "*It is only one of many cases where, under the name of taxation, an oppressive exaction is made, without constitutional warrant, amounting to little less than an arbitrary seizure of private property. It is, in fact, a forced contribution levied upon property held in other States, where it is subjected, or may be subjected, to taxation upon an estimate of its full value.*"

But this new decision teaches us that all personal property, if taxed at all, must be taxed in the city or town where found, and not elsewhere. The injustice and oppression are also the same as in the case of State exterritorial taxation when the tax is levied upon a person for property not within the district where the property is actually located and protected. It is only a degree of oppression, and this authoritative opinion of the United States Supreme Court can not fail to give a new impulse to the feeling that taxation without protection is merely legalized brigandage.\*

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\* See an essay on Double Taxation in the United States, by Francis Walker, published in the Studies in History, Economics, and Public Law, Columbia College, New York.

fifth of one per cent; or that a tax of from one to two per cent on bonds and notes in Connecticut is sufficient to nearly tax out of existence all conscientious scruples of its people in respect to the violation of law and the perpetration of fraud in respect to matters of taxation.\*

In view of these facts the following answer, made some years ago by a man of New England birth and education, but of unenviable character and influence, to a question as to his father's honesty, has no little of point and application: "He is honest as the world goes. He won't tell a lie for twelve and a half cents" (the New England ninepence), "but he will tell eight for a dollar."

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\* In 1897 the Legislature of Connecticut, not satisfied with the unexpected large amount of notes and bonds returned for taxation at the rate of one fifth of one per centum per annum when voluntarily paid in advance, doubled the rate of tax to two fifths of one per cent, or four mills on the dollar. What will be the result of this fiscal policy is yet to be determined; but it is to be regretted that the original experiment could not have been longer continued.

recent lecture, a leading American theologian is credited with saying to an assemblage of divinity students that "he adopted as the basis of his discussion of property the 'profound and perfect' definition of the Roman Catholic theologian Brownson, namely, that 'property is communion with God through the material.' And to realize and apply this definition is the great duty of the Christian teacher." \*

A more rational conception of the exact nature of property, or rather of what property consists, would, however, seem to lead to this conclusion, namely, that property, at least for the purpose of taxation, is always a *physical actuality, with inhering rights or titles, the product solely of labour, and is always measured in respect to value and for exchange by labour.*

Thus, for example, a fish *free in the ocean* is not property; but when it has been caught through the instrumentality of labour it becomes property. Property, furthermore, can not be created except by an application of labour of some kind to material substances, which because they are substances and in order to be substances must have both a *corpus*, or an entity, and a *situs*, or a situation. Human labour incorporated in things, and thus saved to those who acquire the things, is also what constitutes value or capital; and nothing can be capital but the existing results of previous labour, which can contribute to man's enjoyment and well-being.

It is interesting also to note in this connection how the etymology of the Latin words *possessus* and *possideo*, namely, *po* and *sideo*, to *sit by* or *on*, and from which in turn we have the English word *possession*—the common definition of property being something possessed—curiously harmonizes with and confirms the conclusion that property must be always a physical actuality. For it is clear that it is only a material something, a visible and tangible entity, that one can sit down on, and not an invisible, intangible nothing, the fiction of law or of the imagination.

A limitation, little recognised by legal writers and authorities, on the exercise of the right of *eminent domain* (the name given to the power inherent in state sovereignty

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\* "The term property denotes a right over a determinative *thing*. Property is the right of any person to possess, use, enjoy, and dispose of a thing."—*Eaton vs. Boston*, 51 N. H., 504.

of making a compulsory purchase of private property for public use), also sustains the correctness of the definition of property as above given; inasmuch as this right is never conceded or made applicable to other than an *actuality*, and never to a mere representative of something that is not material. Thus one of the illustrations of Roman jurisprudence handed down by Tacitus was to the effect that an emperor was not allowed to appropriate the right to carry a stream of water through the lands of a private individual, but did pay damages for the injuries thereby accruing to the lands.

All investigation on this subject can therefore, it is believed, lead to but one conclusion, and that is that *property is always "embodied or accumulated labour."* And as political economy does not and jurisprudence ought not to take cognisance of *châteaux en Espagne*, these are the only senses in which political economy and the law can legitimately reason about property.\*

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\* The statement is frequently made that all value is the product of labour. Adam Smith says, "Labour is the fund which originally supplies a nation with its wealth." McCulloch says, "Labour is the only source of wealth"; and all the early writers, in one form or another, say the same thing. Accepting under such circumstances an entire misconception of the true meaning of the word *labour*, the popular mind has been drawn to the conclusion that hand labour or muscular exertion is the producer of all value; and has added the corollary that hand labour is therefore entitled to the entire value thus produced. But when closely examined, the true meaning of the word labour will be found to be, *all that a man can do, either with his muscle or his brain*. On this crude misconception of the meaning of words, philanthropic systems have grown up, under which the weaker ones have lost heart, and the stronger ones have grown desperate, because the hard sense of humanity does not accept their theories. Also, through their influence, these ideas have reacted and are reacting on the labourers themselves, with rather lamentable results. Thus it is a very general complaint of the present time that the ordinary workman, the person commonly understood by the word "labourer," puts so little mind into his or her work that it is perfunctory to the last degree; concerns itself very little with results, but expends its efforts in a function whose sole end is to escape blame or actual discharge, and to get along with the least possible exertion; when the fact is, that the three functions of capital (which is accumulated labour), labour (in the muscular sense), and management (or brain power) must as a rule act conjointly, in order to insure the best results. "In more recent times, a truer appreciation of this word has arisen, but even yet has not been so absorbed into the

Examples of property which is apparently not the result of accumulated or of any labour, and so militating against these conclusions, will doubtless suggest themselves: such, for instance, as a diamond found upon the seashore, land squatted upon and obtained by pre-emption, bank stock, patent rights, copyrights, annuities obtained by gift or purchase, franchises, monopolies, and debts; but an examination will soon prove that the objections embodied in them are more specious than real. Thus, in the case of the diamond accidentally picked up, which is perhaps one of the most striking of all the examples that can be adduced in favour of the position that property can come into existence without the agency of labour, it may be said: first, that an exceptional fact like this can not constitute an adequate basis for the enunciation of a principle; and, next, that the value of this accidental diamond is solely determined by and represents the value of the labour which has been required to obtain all other existing diamonds. The moment the fact ceases to be exceptional, the moment diamonds can be had in abundance by merely picking them up, that moment their value will simply represent the cost of the physical effort requisite to pick them up. Again, if land squatted upon has any value as property whatever in the first instance, it is because it is the embodiment of the labour required to discover it, to conquer it, to defend and protect it; to effect all of which, taxes, which are the results of labour, may have been paid for centuries. If it acquires any additional value beyond this, after it has been squatted upon, it will be simply because the results of labour have become connected with it, or the value of other land or other property the products of labour, for the use of which labour competes, are reflected upon it. In 1620 the land upon which the city of Boston stands could have been bought for a string of sea shells; in 1894 its value for assessment as property for taxation was probably in excess

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general fund of knowledge as to bear practical fruits; and it needs to be constantly dwelt upon, set forth, reiterated, and explained, until it shall become a common possession of those who think." The reason why more attention has not been given to this subject by the earlier economists has been assigned to the fact that they drew their illustrations from a very primitive life, where the bow and spear figured prominently.—*Address, American Social Science Association, 1893, by F. J. Kingsbury, LL. D.*

of \$900,000,000. But in both instances the valuation was determined by one and the same standard: in the first, by the amount of labour required to collect and string the shells; and in the second, by the amount of labour and capital—which is the result of labour—which has been embodied in the land or become connected with it. Take away the labour and its accumulated results, and the site of Boston will be worth no more at the present time than it was in 1628, when William Blackstone first obtained it.

Analyze next the alleged property in bank notes. The coin in the vaults of the banks, the vaults, the building, the books, the furniture, and other physical actualities—the results of labour—employed in transacting the business of banking, are the real property of the bank. The bank stock, so long as the bank exists, is merely a right to receive dividends. The creation of a bank obviously does not create any property. The notes discounted by the bank over its counter are inchoate titles to the debtor's property or to his rights to property; and the notes issued by the bank are inchoate titles to the bank's property or to its equitable rights to property. The bank, apart from its physical actualities and machinery, is simply a ledger recording credits and debits. But credits and debits are only convenient forms of bookkeeping, or the records of transfers of property and of rights, titles, and interests in property pre-existing. Credits and debits, moreover, stand to each other in the relation of an equation. There can be no credit without a debit, and no debit without a credit; strike out one side of the equation, and the other disappears of necessity. If there were no creditors there could be no debtors, and, *vice versa*, the moment debtors cease to be debtors, that same moment creditors cease to be creditors.\*

*Copyrights* and *patents* are simply legislative enactments to protect pre-existing property. A manuscript, a painting, or an invention is the joint product of physical and intellectual labour, which the copyright or patent right protects, the same as other forms of law protect other visible and tangible property from robbery and spoliation. The

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\* The Supreme Court of Alabama has recently decided that when a bank in that State owns real estate the same is not liable to taxation as a part of its capital stock.



relation which these instrumentalities sustain to property is clearly indicated by asking the question, whether there can be such a thing as a patent granted for what has never been reduced to a physical actuality; or a copyright given for the flight of fancy of a poet not embodied in the materiality of a manuscript or in the pages of a printed book. John Milton sold *Paradise Lost* to Samuel Simmons, bookseller, for *five* pounds ready money; but Gray's "mute, inglorious Miltons," who only imagined and never wrote, could never have obtained a copyright or any money offer whatever—no, not even reputation—for their imaginings, though for all that the world knows they might have been infinitely superior to the Milton who became glorious because he was not mute, in all that relates to mental attainment.

"A person can read from a book, can quote from it, use its ideas in speaking and writing, and even attempt to pass them off as his own, and he will find no legal obstacle to such action. But the moment he tries to duplicate the material form in which the ideas appeared, that moment he passes from the realm of the intangible to that of the tangible"; for the book, which is the concrete thing in which the author has embodied his ideas, is an *entity*, and because an entity representing embodied labour is property which the law will protect to the owner, and can also legitimately tax, if it will. There have been repeated decisions by the courts \* that there can be no property in ideas—until, for example, an author through a copyright, or an inventor through a patent, has put his ideas in such

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\* Some years since an action was brought in a United States court by one Kortenhaus against the American Watch Company, of Waltham, Mass., to recover royalties on an improvement in stem-winding watches that he made, and which, he averred, the defendants had put to use without his consent and without awarding him any compensation therefor. The plaintiff swore that he had submitted his invention to the company's inspection with the view of selling it, but it refused to purchase, and he discovered afterward that the company had adopted the improvement, and that he had made the mistake of not patenting it. The court dismissed the action, and ruled that there was no right of property in an idea as an idea, and that it could only be made property by letters patent. Had, however, a patent been secured upon the improvement, its value as property would have been undoubtedly very considerable.

tangible form that the Government can put its stamp upon them.

It is also exceedingly curious to note how Shakespeare, whose range and accuracy of knowledge were so wonderful, clearly perceived, and as clearly expressed, the whole essence of modern political economy and jurisprudence in respect to this immediate problem, when, in the following lines from *A Midsummer-Night's Dream*, he says:

“ The poet's eye, in a fine frenzy rolling,  
Doth glance from heaven to earth, from earth to heaven,  
And, as imagination bodies forth  
The forms of things unknown, the poet's pen  
Turns them to shapes, and gives to airy nothing  
A local habitation and a name.”

In other words, according to Shakespeare, as well as according to political economy and common sense, however brilliant may be the imagination of the poet or inventor, he has no property in his ideas or imaginings until he has reduced them through labour to an actuality. And then the value of the actuality produced for the purpose of exchange or sale, provided there is a copyright or a patent to prevent use without compensation, will be just in proportion to the effectiveness or desirability of the labour exerted upon or embodied in it. The standard for measuring the value of the work of a Shakespeare, a James Watt, and a street sweeper is one and the same.

Again, an annuity, like bank stock, is a right to receive property, the result of previously accumulated labour, and its transfer by sale or bequest is simply a transfer of an equitable right; and a right of this character, in turn, is not property, but a title to pre-existing property. So, also, in respect to *franchises*, which, although often spoken of and regarded as property, are clearly nothing but rights. Thus, for example, a franchise of a railroad is simply a right to operate a road in a particular manner; and a legislature can not and does not create a railroad by creating or granting a franchise. At the same time, the value of a physical actuality may undoubtedly be increased by a franchise which gives a right to use such actuality in a particular way. A monopoly, also, like a franchise, is valuable, but its value consists in the fact that it gives to certain persons privileges that are taken from others, and the

making of a monopoly no more creates property than does the making of a franchise.

Some persons, whose opinions are worthy of respect, have raised a point in discussing this question, that there is a distinction to be recognised between property and capital; and that both in law and political economy the latter does not necessarily conform to the definition that has been here given to the former. But can there be such a thing as capital which does not represent a physical actuality in the sense of embodied labour? Capital is the interest of a person in embodied labour over and above his debts, or his interest in legal or equitable rights to embodied labour, and can have no value, and is merely imaginary, except it has the right, title, or power to command embodied labour, or to exercise dominion over property the result of labour. All that we labour and toil for is embodied labour. We will not give our labour for the "baseless fabric of a vision," or our accumulated labour for the dreamy creations of a Berkeley or the imaginary castles of poets, except so far as they make them manifest in material forms or writings.

By some, also, the forces of Nature are regarded as property; but they are not so until dominated over and subjugated by man; and then only do they acquire value and become negotiable and subject to proprietorship. Gravity and electricity, as free forces, are incapable of sale and taxation; nor can they, in any rational view, be considered as property. According to recent decisions of the courts of the United States, electricity is not a manufactured product, and electric-light plants do not manufacture it, but only distribute it.

WHAT ARE TITLES TO PROPERTY?—But while political economy recognises nothing as property except physical actualities, the law, for the sake of convenience, has so long treated titles as conveying the same ideas as property, that the profession and the public have very generally come to regard the two as equivalent or identical. Consideration is, therefore, next asked to this point.

Property being embodied and accumulated labour, it becomes endowed, in all places where the rights of labour are recognised, with the attributes and incidents of titles or evidence of just ownership or possession—inchoate, legal,

use as money would be impossible; and the courts, recognising this principle most fully, have always held that in cases where negotiable instruments or money have been stolen, and in consideration for value received have come into the hands of innocent third parties, the title to such property in the hands of the holders is perfect and irrevocable.

Again, the circumstance that State, municipal, and railroad bonds, and all other strictly negotiable instruments, even warehouse receipts payable to bearer, are subject to attachment by legal process only at the place where they actually are, and without regard to the whereabouts of the owner or his domicile, of itself also clearly defines and limits the *situs* of such property for taxation; for clearly a State which has the power to make a legal attachment operative against a given property has also the power to tax such property; while, on the other hand, a State which through lack of possession and jurisdiction, can not attach a specific property, certainly can not enforce its tax laws against it, or give protection in case its rights or the rights of its owners are violated. And, again, can the right to tax personal property exist in a State from which the property is so confessedly absent that there is neither right, power, nor possibility of passing title to it within the territory of the State by delivery?

That the view thus taken respecting the *situs* of negotiable instruments, and especially of railroad mortgage bonds, for taxation, is in strict conformity with the opinion of the Supreme Court, is also evident from the fact that in summing up the court held that not only was a mortgage bond issued by a railroad chartered by Pennsylvania, and in the hands of a non-resident, property out of the State, and as such beyond the jurisdiction of the taxing power of the State, but also that the State could not tax such property even when owned by a citizen and resident, unless the bond was at the time of assessment actually within the territory of the State. And as this point is a most important one, it is desirable to ask attention to the exact language of the court establishing it.

"We are clear," says Justice Field, "that the tax can not be sustained; that the bonds, being held by non-residents of the State, are only property in their hands, and

that they are thus beyond the jurisdiction of the taxing power of the State. *Even where the bonds are held by residents of the State*, the retention by the company of a portion of the stipulated interest can only be sustained as a mode of collecting a tax *upon that species of property in the State*. *When the property is out of the State, there can be no tax upon it for which interest can be retained*. The tax laws of Pennsylvania can have no extra-territorial operation."

The decision of the United States Supreme Court, of which an analysis has been above given, ought therefore to be regarded as constituting a real chapter of progress in American local taxation; because, by contributing powerfully to break down the present popular system, which, founded on an erroneous and impracticable principle, never has been and never can be executed with justice and efficiency, the time is thereby hastened when a better system shall be accepted and inaugurated. The logic of this decision, moreover, will not only pervade courts—State and Federal—but will be felt in legislative halls, and be impressed upon the conscience of the people. The court itself, in referring to the tax under consideration, says with great point and truth: "*It is only one of many cases where, under the name of taxation, an oppressive exaction is made, without constitutional warrant, amounting to little less than an arbitrary seizure of private property. It is, in fact, a forced contribution levied upon property held in other States, where it is subjected, or may be subjected, to taxation upon an estimate of its full value.*"

But this new decision teaches us that all personal property, if taxed at all, must be taxed in the city or town where found, and not elsewhere. The injustice and oppression are also the same as in the case of State exterritorial taxation when the tax is levied upon a person for property not within the district where the property is actually located and protected. It is only a degree of oppression, and this authoritative opinion of the United States Supreme Court can not fail to give a new impulse to the feeling that taxation without protection is merely legalized brigandage.\*

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\* See an essay on Double Taxation in the United States, by Francis Walker, published in the Studies in History, Economics, and Public Law, Columbia College, New York.

grantor, not to resume the right in the thing granted; and if, therefore, a State can tax extra-territorial contracts, it may tax her citizens on deeds of land in other States.

This analysis of the meaning of property, from both an economic and legal point of view, might be prosecuted with interest and profit to a much greater extent; but from what has been presented it would seem clear that nothing can not be something; or, in other words, that *property is always a physical actuality*, which has become valuable or property by some form of labour, and can not be created by mere paper documents, except to the extent of the value of the paper and the writing or printing upon it. Or, in other words, a title to property, a representative of property, can no more be property than a shadow can be a substance: and if this conclusion be true, then it would seem to follow, of necessity, that the act of making debts, bonds, verbal or written contracts, notes, book accounts, mortgages, warehouse receipts, titles, certificates of stock, or any form of salable or transferable rights, is not a creation or production of any new property, but simply an exchange, by contract or operation of law, of the rights and titles of parties in pre-existing property; and that any tax on any of these rights or titles is only another form of burdening the prop-

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nothing to do with it. The only possible test of property is sale. The reason why credits are more limited in their use than commodities and services is simply that they relate to *future time*, which is less certain than past and present time.

“Yours truly,       — — —.”

With a desire to obtain an opinion on this interesting economic question from the merchant, the foregoing note was referred to his consideration by permission, and elicited from him the following rejoinder:

No. 2. “Professor ——— seems to ignore the fact that debtors hold all their property which is not mortgaged or encumbered, as trustees to pay their creditors generally, and it is this same principle which gives value to unsecured credits.

“But the professor says, ‘So far as we can sell we make values.’ Does he mean that a counterfeit which is so good that it can be sold is a creation of value? Would a credit sell at all if it was not an inchoate right to the unsold and unencumbered property of the debtor? Of what value is a claim on a man if the claimant has no rights on the debtor’s property? Such a claim would be no better than a claim on the northeast wind.”

erty which is the subject of the rights or titles. But some, in answer to the assertion that rights, debts, and titles are not property, for if they were we might make property by making rights and titles, might reply, "But we do make property in that way every day." But we can not do this indefinitely because we can not sell the title indefinitely; and why not? Let us, therefore, stop and think about it, and ask ourselves why we can not sell titles and credits indefinitely. We can sell property in the sense of embodied labour indefinitely. Why not titles and credits? The answer is simply that when we buy a title or credit we pay for and in a legal and economic effect buy the physical actuality, or right of dominion over it, which the credit or title represents, and nothing more. The moment one undertakes to sell titles or credits in excess of or separate from the embodied labour they are supposed to represent, we call the act swindling. Fancy a member of the legal profession appearing in court to defend such a person for selling a title, separate from an actuality, on the ground that such a title was property because he was able to sell it, and that somebody not keen was persuaded to buy it! Would the plea *caveat emptor* avail in such a transaction?

In other words, when the title does *not* inhere in the physical actuality, we give it a bad name, and the most imaginative do not call it property. A title which is really a title is never suspended or in abeyance. If a thing is embodied labour, some one, or a number of persons, has some form of title or dominion over it, and the title is inseparably allied to the thing; and therefore the sale of the title is the sale of the thing, because they are one and inseparable. Embodied labour, therefore, embodies all forms of title to the embodied labour. Credits and titles of themselves have no value, and separated from the things they represent, they can not honestly be sold at all. Who will buy them? We know the character of the men who will sell them, and their representatives will always be found in penal institutions.

If some other name be given to embodied labour than *property*, it will not diminish its power to satisfy human wants; and if, on the other hand, we call credits and titles property, they can not be eaten, or made of themselves in



any form to satisfy wants, but they can represent things which will satisfy wants. It is interesting also to note that when attempts have been made to claim salvage for the recovery of bills of exchange, or other titles of property, from wrecks, the courts have decided that salvage in such cases is not allowable; and, therefore, have practically held that credits and titles are not property, but mere rights to property, and in the case of negotiable instruments, when destroyed by fire or otherwise, the right under the destroyed instrument still remains, and can be enforced in courts when identified.

ACTUALITIES, NOT FICTIONS, THE LEGITIMATE SUBJECT OF TAXATION.—Enact such laws, also, in respect to taxing titles as we may, experience will prove that taxes can not be practically levied on imaginary things, or legal fictions, because it is some physical actuality, in the sense of embodied labour, that must, after all, and in the end, pay all taxes. Also, “taxes are generally demanded in money, and any tax law will be understood to require money when a different intent is not expressed” (Judge T. M. Cooley). If Legislatures have the power of creating *fiat* property—that is, imaginary or fictitious property—it is beyond their power to make it pay taxes, for nothing less than omnipotence can make something out of nothing.

On the other hand, let us consider for a moment the converse of this proposition—namely, *that titles are property, and, as such, ought not to be exempt from taxation*. If this is so, then it would seem to follow that, by making titles, we can make property; and that when a man mortgages his farm for ten thousand dollars, the community have ten thousand dollars’ worth of real estate and ten thousand dollars’ worth of personal property, where, before the execution of the mortgage, there was only the specified value of the real estate. On the other hand, when the mortgage is paid off, ten thousand dollars’ worth of personal property is destroyed, and by a parity of reasoning the State must be to that extent the poorer. A clear comprehension, then, of the facts, that property is embodied labour; that property can alone suffice to pay taxes; that rights, titles, and credits are but the representatives of property; and that, having subjected the property to taxation, there is no sense or equity in again assessing its



representative, will at once divest the problem of taxation from many embarrassments which now seem to invest it, greatly simplify it, and go far toward the determination of sound and fixed tax principles.

Important decisions touching the question here under consideration that have recently been rendered by courts of high repute are also here worthy of notice. Thus, in California, the Supreme Court of the State has had before it the vexed question of taxation of mortgages, and the judges have decided, in accordance with justice and common sense, that, as mortgages do not in any way increase the body of wealth in a community, any tax laid upon them is laid upon a fictitious value; is in so far an imposition upon the taxpayer, and, inasmuch as it represents a second tax on real estate already taxed in the hands of the owner, is "double" taxation within the meaning of that term in the Constitution of California and other States.

In 1875 the following case came before the Supreme Court of New York (General Term) under the following circumstances: The administrators of a citizen being taxed by the proper tax authorities of the State for a large amount of personal property, put in a schedule of personal assets consisting mainly of certificates of stock in various railroad and mining companies, with a plea for abatement. The court, after consideration, through Noah Davis, P. J., rendered the following decision: "We are of the opinion also that the commissioners erred in including in their assessment the stocks of corporations created by and under the laws of other States. Such corporations are taxable, and we must presume, in the absence of proof, that taxes in their respective home States are duly assessed and collected upon their capital stock or property. The stocks in such corporations, held by individuals here, are simply representatives of capital or property employed in business in other States, the title of which is vested in and controlled by the artificial person created by and residing in such States. They represent an interest which is or may become a membership in the corporation and evidence of a right to participate in divided profits and in the ultimate dividend of surplus after the payment of debts and obligations of the corporation. The stock certificates are not themselves the property, but are evidences of the rights

just mentioned; to be possessed, enjoyed, and enforced under and in conformity with the laws of the State which created the body corporate."

The views thus expressed respecting the inconsistency and undesirability of directly taxing titles, credits, obligations of indebtedness, and instrumentalities of exchange are so generally and thoroughly accepted by the statesmen, financiers, and economists of Europe, that no recognition of this form of taxation can, it is believed, be found in any of their fiscal systems. In England the very idea would be scouted; and in France, where the need of great revenues is most imperative, and resort has been had to almost every other device and expedient for collecting contributions from its people, the taxation of titles and credits has never been contemplated. Some years since (1879), when the State of California adopted a new Constitution, and, in virtue of the statutes subsequently enacted under it, made subject to additional taxation bonds, moneys, promissory notes, certificates of indebtedness, and shares of stock in corporations otherwise taxed, the utter absurdity of such action was thus strikingly demonstrated in one of the San Francisco papers by the following humorous illustrations:

"A has a horse; B has nothing, but is honest and industrious. B buys A's horse and gives his promissory note for one hundred dollars. The horse previously taxed as property in A's hands is now taxed as property in B's hands, and A is taxed—just as much as he was before—on B's note, which is property also. That is to say, the new Constitution holds that by a mere stroke of his pen, B, who has nothing, and can give himself nothing, can instantaneously create as much property for others as others may happen to think that he will some day be able to acquire. Truly the performance of the man who causes two trees to grow where but one grew before is of so little comparative benefit that he might be justly censured for a sin of omission.

"Let us suppose that B had given not a written but an oral promise. Ought not A to be taxed on that? If not, *why* not? Because an oral promise is not an evidence of debt? not a 'credit'? \* But how if there were wit-

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\* Promises, according to Professor McLeod, are property.

nesses? Oral promises *are* credits, however; nay, even implied promises are. You have to pay—the courts will make you pay—your tradesman's account whether you have ever passed your word or not.

“Now a ‘credit,’ be it promissory note, mortgage, certificate of deposit, or what you will, is not only not property, but is proof that the holder has parted with property that he once had. His paper credits, which merely certify that in consideration of certain advantages (interest, freedom from cares of management, etc.) he has surrendered his property to another, have no function but that of enabling him at some future time not to resume his own, for it is no longer his, but to acquire its equivalent from the present owner. The more a man has of these things, which it is proposed to tax as property, the poorer he is—not necessarily poorer than a man with none, but poorer than himself was before he got them. It was only by surrendering them that he can become again as wealthy as he was.

“Is he then to escape taxation, living at his ease on his interest, while the man who pays it bears the expense of government for both? Let us see if under the present system the latter does anything of the kind. X wants a thousand dollars of Z, for which he can afford to pay, say, sixty dollars a year. But if the State government is going to exact from him ten dollars, he can afford to give Z but fifty, with which that person must be content, or X will either get the money from another or not take it at all. It is clear, therefore, that the lender really pays the tax, the borrower being unaffected directly; what he pays to the State he would otherwise have to pay to the lender. Indirectly he is affected thus: Taxation of the principal, by reducing the interest, reduces also the volume of borrowable money by driving a part of it into more profitable investment, and the scarcity so created tends to restore the rate of interest, the cause thus counteracting its own effect, as the slackening in the speed of a steam engine is the agent that increases its velocity.

“Reverting to the matter of the horse, we find that quadruped in the possession of B and a note for one hundred dollars in the hands of A. Relying on B's payment of the note, A purchases a hundred dollars' worth of flour

from C, giving *his* note. C knows that A is good for the amount, and gives his own note for a hundred dollars for a barrel of whisky to D, who then feels rich enough to purchase a thousand cigars, at ten dollars a hundred, from E, satisfying him with a note. At the end of a month D's hospitable friends have burned all that gentleman's cigars; C, in one protracted, solitary revel, has gone through his barrel of whisky like a rat through a water pipe; A's family and retainers have consumed his flour like a flame in flax; and B's charger, broken by the weight of the financial superstructure reared upon his patent person, lies deadwise on the plain, with daisies at his head and at his feet. But he has left a legacy of taxable 'solvent credits' that does honour to his memory better than a monument of brass, and

" 'Nothing beside remains round that colossal wreck!'

"Working for a dead horse is, however, proverbially disheartening, and it is some years before B has put by enough money to discharge his debt to A, and has thereby rendered him unable to pay C, whose habit of being supinely drunk has made the expensively befriended D whistle in vain for the wherewithal to pay E. But finally B hands a hundred dollars to A, who hands it to C, who hands it to D, who hands it to E; and four hundred dollars' worth of taxable property, on which the government of this State had been living, like St. Simon Stylites on his capital, vanishes into thin air; for the notes go to the kitchen stove, and the new Constitution made no provision for taxing the ashes.

"Charles Young takes a pig in payment for his paper—like for like. Being a Jew, Mr. Young has conscientious scruples against eating pork, so he sells his pig to a butcher, taking his note. The butcher, finding the animal more than usually intelligent, thinks it would be wrong to hide the light of its political sagacity under a bushel of salt, and sells it alive to Clitus Barbour to represent that statesman, who helped to launch the new Constitution. Clitus gives his note for the pig. Becoming jealous of its rivalry, he sells it to Governor Kearney (taking his note), whose parlor it graces for a season, but, being detected in an indiscretion, the Governor sells it to

General Howard, who gives his note. General Howard wants this pig to write letters favouring the new Constitution; but, as it scorns to prostitute its intellect that way, its less scrupulous owner parts with it to the congregation of Metropolitan Temple, whose pulpit it now fills, they giving their note and a benediction.

"The foregoing pig is now represented by five promissory notes and a benediction not taxed. None of these notes bear interest, nor are they of any benefit to their holders except as they may enable them, at a stated time, to get something of the same value as something previously renounced. The various notes make a trail of papers like that left by the 'hare' in the boys' game of 'hare and hounds.' Now comes the assessor under the new Constitution, and, in obedience to a righteous provision taxing property used for religious purposes, assesses that porker in the bosom of the church. Then he strikes the paper trail extending out through secular spaces into an editorial office, and, having assessed the grunter where it is, he again assesses it where it was last, and again where it was the time before, and so on through the whole series, until that not very valuable flitch of bacon, which has 'dragged at each remove a lengthening chain' of 'solvent credits,' has been the innocent cause of six payments into the State treasury. Beyond Mr. Young the assessor does not trouble himself to go, for on the ranch of a granger who is so intelligent as to exchange pigs for his papers the pachyderm's trail consists of tracks in the mud, and these the new Constitution neglected to declare to be property."

**MONEY PROPERTY.**—But, after all, says some objector, "notwithstanding your many and plausible arguments—your statement that all the world except the United States have done away with the old, atomic, inquisitorial system of taxation—I do not like your proposed reforms, and for the reason mainly that they exempt 'money property'!" It is most important, therefore, to inquire what is "money property," and also its relations to local taxation.

All capital or property is accumulated labour, labour being the source of all property. Hence any attempt to excite prejudice against capital or property, or to attack either, is an attack upon labour itself.

"Moneyed property" is generally understood to mean

*evidences of debt*, which are not in a strict sense property; but *rights to property*, or *assignments of property*, according to the amount of interest of the creditor.

WHAT IS A MORTGAGE?—A mortgage may be defined to be a species of conveyance of property—generally real estate—for the security of a debt, generally created by a loan of money, and can not be regarded as a *complete*, but rather a *conditional* or *quasi-title* of the property covered by the conveyance. It is not so much property as a deed; and neither is property except to the extent of the value of the paper and the labour of writing or printing it, and still both are very valuable as conveying rights to property. The property is the real estate conveyed or mortgaged, and a tax on the land and another tax on the deed, or a tax on the land and another tax on the mortgage which covers the land, will in effect be a double tax on the land. This tax may be made a quadruple tax: first on the land, then on the deed of the land, then on the mortgage which is on the land, and then on the lease which the landlord may grant to the tenant.

The following curious instance of hardship in taxing mortgages actually occurred in one of the counties of central New York under the existing system: A worthy farmer and his wife, finding themselves becoming incapacitated through age from taking practical care of their little farm, sold it for five thousand dollars, and allowed the purchase money to remain in the form of a mortgage, with the expectation of living on the interest paid annually by the purchaser from the profits of the farm. The town being very small, the fact of the sale and the consideration paid became known to every one, and the assessors were compelled, in opposition to their usual practice, to tax the old man to the full amount of the mortgage, as personal property. But the year in which this was done happened to be a year in which the town, anxious to avoid a draft of men for the army, to which the old man was not liable, put up the rate of taxation to more than the legal rate of interest, in order to provide sufficient money to purchase recruits. The result was that the poor old man and his wife found that not only was all their income from the mortgage swept away by the tax collector, but they were even obliged to go out for days' work, in

order to pay a balance of taxation and provide means of support; and this, too, while the identical farm for which the mortgage was given was taxed at one fifth its true value, and other investments of other citizens of an invisible and intangible character undoubtedly escaped taxation altogether. And this we call equality in taxation.

TO TAX INDEBTEDNESS IS TO TAX THE BORROWER.—If any one doubts that a tax on indebtedness is a tax upon the borrower, or the property which the indebtedness covers, that question can be easily solved by an *honest, uniform* tax on all State, county, town, and city bonds hereafter issued, by making them all subject to an annual tax of one, two, or more per cent, and by providing that the tax shall be deducted at the time of the payment of the interest. Is there any one who believes that these bonds will sell in the market at the same high rate that they would command if by law they were free from taxation?

We can also test the effect of an honest, uniform tax upon mortgages by providing that mortgages hereafter made shall operate to reduce for assessment the valuation of the land mortgaged to the amount of the mortgage, and that the mortgagor shall pay the tax on the mortgage, and deduct the tax from the principal or interest, when paid to the mortgagee. But who believes, under such a law, that any money would be loaned at the legal rate of interest?

A somewhat curious piece of practical evidence, in support of the truth of the above position, in respect to the taxation of mortgages, has been afforded by an experience of New Jersey. This State exempted, in 1869, all mortgages from taxation in certain of her counties and cities which lie contiguous to New York city; but this legislation, although operating to draw capital away from New York and into New Jersey, was not primarily effected for any such reason, but was brought about in this wise: New Jersey, in the first instance, enacted an honest, uniform law of taxing mortgages, and one, moreover, which could with the utmost certainty be executed, and similar in principle to that above suggested; namely, that the person giving the mortgage should pay the tax on it, and deduct the tax from the principal or interest in settling with the creditor. The result was that all mortgages fall-



ing due were immediately foreclosed, and as no new loans, moreover, could be made, the inhabitants of the growing counties near the city of New York, wishing to borrow money on land, or to sell land, found themselves in an uncomfortable position; so much so, that if the law taxing mortgages in this section of New Jersey had not been promptly repealed by the Legislature, the issue would soon have become a predominant one in the State elections; and hence the explanation of one of the most curious statutes in the history of American legislation which made one tax law for one part of the State and another and a different one for the remainder.\* But the point of chief interest in respect to this whole tax experience to which attention should be especially directed, is, that it did not take the citizens of New Jersey a great length of time to find out that a borrower of money on a mortgage paid the tax, and that the lender was the tax collector, and only paid his part of a diffused tax, as all other persons living, consuming, buying, or selling in the State must pay; and that if the borrower could not legally pay the lender a rate equal to other net profits of investments, he could not borrow. A little experimental legislation in other States will, therefore, effectually explode the vague theory that taxes *uniformly* levied do not diffuse themselves; and although it is true that the persons or property primarily taxed do not charge the entire tax over to others, this very fact nevertheless shows that the tax is diffused with *absolute equality* upon the persons who originally may pay the tax, and upon those who finally bear their portion of it.

LOANS ON MORTGAGES PROHIBITED IN ROME.—Momm-  
sen, in his History of Rome, states that at one period the  
lending of money in that country on mortgages was pro-  
hibited, and it is apparent that a uniform taxation of

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\* "And all mortgages upon estates, chattels, or personal property, taxable by law within said counties of Hudson, Union, Essex, and the city of Brunswick, Middlesex County, and the county of Passaic, except the townships of West Milford, Pompton, and Wayne, for State, county, township, and city purposes, shall be exempt from taxation when in the hands of any inhabitant, corporation, or association residing or located in said counties or cities." (Approved April 2, 1869.)—*Laws of New Jersey, 1869, p. 1225.*



mortgages would amount to a prohibition as effectual as the prohibition which existed under the Roman law. The Roman patricians, in their legislation, wished to prevent the common people from becoming an independent yeomanry, and owning and acquiring real estate through the facilities of borrowing upon mortgages. No chimerical attempt had then ever been made to tax money at interest, and this purpose of having the soil cultivated on shares or by dependent tenants could best be obtained by a prohibition of all mortgages.

Now, it needs no argument to show that a system of onerous taxation of mortgages must have a tendency to re-enact the Roman policy, and that it is undoubtedly the true interest of the state, on both political and economical grounds, to encourage occupiers to become owners, who always give better attention and protection to their own property than to the property of landlords.

**PURCHASERS OF GOVERNMENT BONDS NOT PRACTICALLY EXEMPT FROM TAXATION.**—The purchasers of United States, State, and municipal bonds or securities, which are nominally exempt from taxation, are in effect taxed, and uniformly taxed in the high price which they are obliged to pay for these securities by reason of their exemption from taxation. It is not only a sound principle of political economy that a tax upon money at interest is simply a tax upon the borrowing price of the borrower, causing an increased rate of interest, or a reduced price to be obtained for the obligation given; but this principle has been adjudicated by the highest court of the country, so far as a court of last resort can adjudicate a great principle in economic science. Thus, in the case of *Weston vs. The City of Charleston* (2 Peters, 449), the Supreme Court of the United States, through Chief-Justice Marshall, held that "*a tax on Government stock is a tax on the power to borrow money on the credit of the United States.*" If, therefore, we except the borrower from taxation in the form of a decreased rate of interest, we grant him no special exemption or advantage, for his property, which is covered by the debt, has already in other forms been taxed, and the exemption will diffuse itself in the form of lower rate of interest, which will be the means of producing a higher price of labour, land,

and personal property, until the exemption is completely diffused. Who will then be injured by taking the tax from money at interest? It is probable that he who now adds the tax to the rate of interest, and charges the borrower, and does not pay it to the State, may lose by the change. He will be obliged to enter the open money market and pay the market rate, as the purchasers of Government bonds now do, for evidences of debt that will be free from taxation in the hands of all persons; and the laws of trade will regulate his investment as they daily regulate the price of Government bonds, and will bring down his securities to a rate of interest not much above the rate paid by the national Government. The exemption applied to United States bonds, which is of no practical benefit to the present purchasers, in consequence of the increased price of the bonds, would be of no benefit if applied to the holder of other securities in an established and permanent system, except in freedom from the uncertainties and irregularities attending the exercise of arbitrary and irregular power. If the exemption is an exemption of everything of the same class, it is perfectly equal and fair, and its effect is diffused and equated; and the tax on another article, taxed in lieu of the exempted class of articles, is likewise equated and diffused, and if invisible and imponderable evidences of debt can not be taxed equally no injustice will arise if they are all free from primary taxation, and if the taxes of a permanent system are imposed on other things subject to positive and fixed rules of assessment. The daily price of United States bonds, therefore, is a constant lesson that an exemption of a security from taxation is an exemption of the borrower, and the same law of political economy will rule in respect to both private and public debts. Each State has, therefore, the power to put its borrowers on an equal footing with the General Government, and without injustice or inequality toward the borrower or the lender.

THE OLD AND NEW IDEAS IN TAXATION.—The first attempt made to tax money at interest was instigated against money lenders because they were Jews; but the Jew was sufficiently shrewd to charge the full tax over to the Christian borrower, including a percentage for annoyance and risk; and now most Christian countries, as a result of

early experience, compel or permit the Jew to enter the money market, and submit, without let or hindrance, his transactions to the "higher law" of trade and political economy. But a class yet exist who would persecute a Jew if he is a money lender, and they regret that the good old times of roasting him have passed away. They take delight in applying against him, in taxation, rules of evidence admissible in no court since witches have ceased to be tried and condemned. They sigh at the suggestion that all inquisitions shall be abolished; they consider oaths, the rack, the iron boot, and the thumbscrew as the visible manifestations of equality. They would tax primarily everything to the lowest atom; first for national purposes, and then for State and local purposes, through separate boards of assessors. They would require every other man to be an assessor or collector, and it is not probable that the work could then be accomplished with accuracy. The average consumption of every adult inhabitant of the United States is at least two hundred dollars annually, or in the aggregate \$1,500,000,000; and this immense amount would fail to be taxed if the assessment was made at the end of the year, and not daily, as fast as consumption followed production. All this complicated machinery of infinitesimal taxation and mediæval inquisition is to be brought into requisition for the purpose of taxing "money property," which is nothing but a myth. The money lender parts with his property to the borrower, who puts it in the form of new buildings, or other improvements, upon which he pays a tax. Is not one assessment on the same property sufficient? But if you insist upon another assessment on the money lender, it requires no prophetic power to predict that he will add the tax in his transactions with the borrower. If a tax of ten per cent was levied and enforced on every bill of goods, or note given for goods, the tax would be added to the price of goods, and how would this form of tax be different from the tax on the goods?

"Money property," except in coin, is imaginary, and can not exist. There are rights to property of great value. The right to inherit property is valuable; and a mortgage on land is a certificate of right or interest in the property, but it is not the property. Land under lease is as much

“ money property ” as a mortgage on the same land ; both will yield an income of money. Labour will command money, and is a valuable power to acquire property, but is not property. If we could make property by making debts, it can not be doubted that a national debt would be a national blessing. Attacking the bugbear of “ money property ” is an assault on all property ; for “ money property ” is the mere representative of property. If we tax the representative, the tax must fall upon the thing represented.

## CHAPTER XXII.

### TAXATION OF CHOSSES IN ACTION.

IN addition to the review of the celebrated Foreign-held Bond Case \* decided by the United States Supreme Court in 1893, it is proposed to call attention here to additional and interesting features of this case which have not been hitherto noticed in this connection.

The court having decided the *situs* for taxation of negotiable instruments—railroad bonds, etc.—took occasion also to affirm the taxable *situs* of such other personal property, or evidence of indebtedness, as is generally included under the term *choses in action*, using in so doing the following language:

“But other personal property, consisting of bonds, mortgages, and debts generally, has no *situs* independent of the domicile of the owner, and certainly can have none where the instruments, constituting the evidence of debt, are not separated from the possession of the owner.”

As thus expressed, the reasons given by the court for separating for taxation the *situs* of the two classes of personal property under consideration are so clear, and so in accordance with common sense, as hardly to require any further explanation; and, therefore, it seems only necessary to assist the reader, who, if a taxpayer, is certainly interested in knowing the tax liability of his property, by recalling that while, in the case of negotiable instruments, the title to the property runs with the instrument and passes by delivery, in the case of bonds, mortgages, and sales made to particular persons, and thus non-negotiable, the title, on the other hand, does not run with the instrument, but exclusively with the person of the owner; so much so, that the attachment of a mort-

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\* *Ante*, p. 452.

gage, or the possession by theft or finding of a note payable to a person, does not in any degree alienate or impair its original and legitimate ownership. The decision of the court, therefore, brings all classes of personal property under one harmonious and consistent rule for the purpose of taxation, legal attachment, and protection, by affirming that their *situs* as property is only where they are; which in the case of visible and tangible objects and negotiable instruments, is dependent, from the very nature of things, upon actual and not constructive presence, and in the case of choses in action upon the domicile of the owner; and in thus deciding, the court simply followed English precedents of long standing and the highest character.\*

It may, however, be objected that the practical effect of this decision has been to relieve all negotiable instruments from taxation, inasmuch as, removed beyond the territory and jurisdiction of the State in which their owner resides, they will not, by reason of easy concealment (for which safe-deposit companies in the larger cities of most of the States now offer great facilities), be easily cognizable by the assessors of the locality in which they are deposited. But admitting the objection in full force, as in all reason we must, what then? The Supreme Court has given its opinion clearly and unmistakably; and until this opinion is reversed, it constitutes the legitimate rule of action for both assessors and taxpayers. But suppose it were possible to reverse the opinion in question, would it be expedient to do so? Would it be desirable to abandon the plain common-sense view that the *situs* for the taxation of all personal property is where the law protects it, and where alone an assessment and a legal attachment against it can be enforced, and in its place make *situs* depend on visibility? And if visibility, what degree of visibility? Shall a diamond, a bar of gold, or a rail-

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\* Lord Ellenborough, in King's Bench (*Neilage vs. Holloway*, Barnwell and Allison's Reports, 318), having decided that a negotiable note was a chattel personal and not a chose in action; Lord Abinger, that all foreign government bonds payable to bearer have a *situs* where they are actually situated; and the House of Lords, that registered stocks and bonds of the United States and of the several States not passing by delivery, are not negotiable instruments, and therefore not taxable as goods and chattels.

road bond, belonging to A. B., residing in Boston, but openly displayed in a jeweller's or broker's window in Philadelphia, be taxable in Pennsylvania, and a similar diamond, gold bar, or bond of the same owner, deposited in a drawer of the same shop or office and not so readily visible, be taxable in Massachusetts? Shall we make the *situs* of property for taxation depend upon the keenness of perception or visual organs of an assessor? Or shall we not, rather, admit that the attempt to raise revenue by taxing such property as negotiable instruments which from their very nature are in a high degree intangible and invisible, and thus easy of concealment; which, passing by delivery, are here to-day and somewhere else to-morrow; which are not taxed in any other highly civilized country, and which are in great part, even in this country, specifically exempted by law—i. e., United States bonds, legal tender, national bank notes, etc.—is in itself an absurdity and a wrong; inasmuch as to enforce a levy from one man for one species of property, because through his honesty, ignorance, or inability to escape he can be laid hold of, and allow identically the same description of property in the possession of another man to escape because of varying circumstances beyond the control of the assessors, is not taxation in any sense, but simply arbitrary taking. The court itself, in referring to the tax under consideration, said with great point and truth: "*It is only one of many cases where, under the name of taxation, an oppressive exaction is made, without constitutional warrant, amounting to little else than an arbitrary seizure of private property. It is, in fact, a forced contribution levied upon property held in other States, where it is subjected, or may be subjected, to taxation upon an estimate of its full value.*"

DECISION OF THE SUPREME COURT OF CALIFORNIA ON THE TAXATION OF MORTGAGES.—Any review of the history of local taxation in the United States would be imperfect which failed to notice a notable and interesting decision given in May, 1873, by the Supreme Court of California in regard to the taxation by its State authorities of real-estate mortgages. The question was one that for a considerable time had greatly interested the people of California, and the drift of popular sentiment of San

Francisco seems to have been most unmistakably in favour of their taxation. But how to do it, and at the same time not increase the burden on the borrower, who had mortgaged his land as security for a loan of capital to improve or stock it, was a problem that not a little troubled the lawmakers in Legislature assembled. One proposition brought forward contemplated a deduction from the amount of land tax of the assessment on the mortgage; but as the lands of California were found, as a rule, to be taxed far below their value, and the mortgages for a value far in excess of the assessor's appraisal of the land they covered, it soon became apparent that this scheme was to a greater or less extent equivalent to exempting the land and taxing the mortgage. Another proposition, embodied in a bill introduced into the Assembly, was to make void all contracts by which borrowers agreed to reimburse lenders in the amount of the mortgage tax; while others again were exceedingly strenuous in favour of trying the pleasing little experiment—which no community having once tried ever desires to repeat—of providing that the person giving the mortgage should pay the taxes upon it, but be at the same time authorized to deduct the tax from the principal, or interest, in settling with his creditor. Pending these discussions, however, the Supreme Court, which had the question before it on a suit to which one of the savings banks of San Francisco was a party, rendered a decision, that in virtue of a clause in the Constitution of the State requiring all taxation to be equal and uniform, the taxation of mortgages was unconstitutional and illegal; inasmuch as to tax a given property and then tax a mortgage on it, which mortgage is not in itself property, but, like a deed or lease, is a species of conveyance or acknowledgment of a conditional interest or right in the property, is not equal and uniform taxation, but an unequal and double tax on the property mortgaged.

The importance of this decision, considered as an act reformatory of the popular theory of local taxation, does not require to be proved and illustrated; but as it was unquestionably a step in advance of any heretofore taken by either our Federal or State courts, and as, by reason of it, not only were mortgages exempted from taxation



in California, but also all promissory notes and other evidences of indebtedness, it is desirable briefly to ask attention to the reasoning by which the court was led to its conclusions.

The opinion was given by the Chief Justice—Crockett—who, after reviewing the history of the case, is reported to have used the following language:

“I come now to the point, whether a tax on land at its full value, and a tax on a debt for money loaned, secured by a mortgage on the land, is in substance and legal effect a tax on the same property. We all know, as a matter of general notoriety, that almost universally, by a stipulation between parties, the mortgagor is obliged to pay the tax both on the land and on the mortgage. Practically he is twice taxed on the same value, if he has still in his possession the borrowed money to secure which the mortgage was made. The law taxes in his hand both money and land; and by his stipulation he is required to pay tax on the mortgage debt, and also, if the money has passed out of his hands into the possession of some other taxpayer, it is taxed in the hands of the latter, so that the money bears its share of taxation, and the land its share, in the hands of whomsoever they may happen to be.

“It is very true that a voluntary agreement on the part of the mortgagor to pay the tax on the mortgage debt can not improve its *situs*. The State was no party to the contract, and is not bound by stipulation *inter alias*. The burdens of taxation can not be shifted from those on whom the law imposes them by stipulations between private persons; but in the absence of such a stipulation, an inexorable law of political economy would impose upon the mortgagor the burden, in a different form, of paying the tax on the mortgage debt. Interest on money loaned is paid as a compensation for the use of the money, and a rate of interest as agreed on is the amount which the parties stipulate will be the just equivalent to the lender. If, however, by the imposition of a tax on the debt, the Government diminishes the profit which the lender would otherwise receive, the rate of interest will be sufficiently increased to cover the tax, which in this way will be ultimately paid by the borrower. The

transaction would be governed by the same immutable, inflexible law of trade by reason of which import duties on articles for consumption are ultimately paid by the consumer, and not by the importer. The rate of interest on money loaned is regulated by the supply and demand which govern all articles of commerce; and the burdens imposed by law in the form of a tax on the transaction, which would thereby diminish the profits of the lender, if paid by him, will prompt him to compensate for the loss by increasing to that extent the rate of interest demanded. *If his money would command a given rate of interest without the burden, he will be vigilant to see that the borrower assumes the burden, either by express stipulation, or in the form of increased interest. This is the law of human nature, which statute laws are powerless to suppress, and which pervades the whole of trade governed by the law of supply and demand.* Nor would the enactment of the most stringent usury laws produce a different practical result. Human ingenuity has hitherto proved inadequate to the task of devising usury laws which were incapable of easy evasion; and wherever they exist they are, and will continue to be, subordinate to that higher law of trade which ordains that money, like other articles of commercial value, will command just what it is worth in the market, no more and no less. Assuming these premises to be correct, and I am convinced that they are, it results that it is the borrower, and not the lender, who pays the tax on borrowed money, whether secured by mortgage or not; but if secured by mortgage, he is taxed not only on the mortgage and property, but on the debt which the property represents and which is held as a security for the debt.” \*

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\* Of the soundness of this decision there could probably be no more convincing illustration than the statement that upon its announcement the savings banks of San Francisco gave notice that they would immediately reduce the rate of interest on their loans secured by mortgages by the amount of the tax on the mortgage. And the Alta-California of May 9th, in commenting upon the decision, says: “When the news arrived here yesterday morning” (that the Supreme Court had given a decision) “it was not unexpected; and the idea conveyed by the false rumours set afloat, that the decision was adverse to the savings banks, was accepted as a decision measured by expediency, and not based on sound legal

Subsequently the Hibernia Savings Society of San Francisco having resisted under the provisions of the Constitution of California the taxation of mortgages given to secure the loan of property, the Supreme Court again met the case fairly and squarely—its language by Justice Wallace being reported as follows: “Mere credits are a false quantity in ascertaining the sum of wealth which is subject to taxation as property, and so far as that sum is attempted to be increased by the addition of these credits, property based thereon is not only merely fanciful, but necessarily the imposition of an additional tax upon a portion of the property already once taxed. The taxation thus imposed, nominally upon credits, having resulted in the double taxation of money, the additional tax must be paid by some one. And here all experience, as well as all settled theories of finance, concur that it is not the lender who pays, but the borrower. The borrower is the consumer; the interest that he pays to the lender is the prime cost of the delay for which he has contracted. If the Government, by the imposition of additional taxes, increase the cost, the borrower, being the consumer, must pay for it.”

The court, through Justice McKinstry (the Chief Justice's opinion being in concurrence), enumerated, as follows, some of the absurdities to which an attempt to include *choses in action* in the definition of property would necessarily lead:

“Supposing,” he said, “that the necessities of Government required a tax of one hundred per cent on all values, or, what would be the result of such a tax, an appropriation of all the property in the State—it is plain that the State would receive no benefit from evidences of debt due by some of her citizens to others, and payable out of the tangible property which the State had already taken.

“The Legislature may declare that a cause of action

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principles. Special despatches received changed the result; and when it became evident that the banks and the mercantile community had triumphed, a general feeling of satisfaction was everywhere noticeable. Merchants, bankers, and taxpayers generally received the news with the feelings of men who felt relieved from a terrible incubus.”

shall be taxed, but a cause in action can not pay the tax; and this because it has, and can have, no value independent of the tangible wealth out of which it may be satisfied.

“It may be possible in every case to show that the debtor has paid the tax assessed to his creditor. But it admits of mathematical demonstration—if other property in the State has been assessed at its value—that the money which shall ultimately satisfy the debt (if it ever is satisfied) has paid the tax. If it were practical to assess all the property in the State at the same moment of time, it would be clear to every mind that an assessment of a credit was an attempt to transfer to it a value elsewhere assessed. If a debtor was found to be the owner of one thousand dollars, and is assessed for that sum, and his creditor is found to be the owner of his note for one thousand dollars, and is assessed for a like sum; and if the day after the visit of the assessor to the creditor the debtor shall pay his note, it is clear that this same value has been twice taxed; since the debtor has parted with his money, and received only that which is certainly not taxable property in his hands, and which can never afterward be assessed. When a debtor pays his debt, he does not abstract or destroy any portion of the taxable property of the State; the aggregate of values remains the same.”—*Opinion of Justice McKinstry*.\*

Suppose, “were such a thing possible, that the entire tax rolls exhibited nothing but indebtedness. Taxation under such circumstances would, of course, be wholly fanciful, as having no actual basis for its exercise.”—*Opinion of Chief-Justice Wallace*.

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\* See the article by Carl C. Plehn, on the Taxation of Mortgages in California, in the *Yale Review*, May, 1899.

## CHAPTER XXIII.

### THE CASE OF KIRTLAND *vs.* HOTCHKISS.

THE above designation has been popularly given to one of the most important questions that has ever come before the legal tribunals of this country, and the record of which has been heretofore so difficult of access that it has not attracted the attention it merits, but which it is to be hoped will prove at no distant period a subject of popular interest and future judicial consideration.

The particulars of the case are in the main as follows:

In 1869, or previous, Charles W. Kirtland, a citizen of Woodbury, Litchfield County, Connecticut, loaned money, through an agent, a resident and citizen of Illinois, on bonds secured by deeds of trust on real estate in the city of Chicago. Each of these bonds declared that "it was made under and is in all respects to be construed by the laws of the State of Illinois," and that the principal and interest of the obligation were payable in the city of Chicago. The deed of trust also contained a provision that all taxes and assessments on the property conveyed should be paid by the obligor (borrower) without abatement on account of the mortgage lien; that the property might be sold at auction, in Chicago, by the trustee, in case of any default of payment, and that a good title, free from any right of redemption, on the part of the obligor, might in that case be given by the trustee. Another interesting feature of the case not to be overlooked was, that pending the proceedings to be next related, the loans as originally made became due and were paid; when the proceeds, without being removed from Illinois and returned to Mr. Kirtland in Connecticut, were reinvested in Chicago by his agent, under terms and conditions as before.

These facts becoming known to the tax officials of the town of Woodbury, they added in 1869 to the list of property returned by Kirtland for the purpose of taxation, as situated within the State, the sum of eighteen thousand dollars; and in 1870 the sum of twenty thousand dollars, to represent the amount of property owned and loaned by Kirtland, in each of these years, as was conceded, without the territory of the State. The sums thus added were subsequently assessed in the town of Woodbury in the same manner and at the same rate as was other property which Mr. Kirtland owned within the State and there situated.

Payment of the taxes thus assessed on the amount of these Illinois loans being refused by Kirtland, the tax collector (Hotchkiss), in April, 1873, levied his tax warrants on the real estate of the alleged delinquent in Woodbury, and advertised the same for sale; and on petition for injunction to restrain the collector from such proceedings, on the ground of the illegality of the tax in question and its assessment, the case came before the court of last appeal in the State, known as the "Supreme Court of Errors"; it being agreed by all parties concerned that the only question in the case was whether the bonds owned by Kirtland, drawn in the form and manner stated, were liable to taxation in Connecticut.

CASE FOR THE RESPONDENT.—In the argument before and in the opinion rendered by this court the following were the points mainly relied upon in support of the position that the petition for injunction in restraint of the collection of the tax should not be granted: *First*, that the statutes of Connecticut explicitly authorized and required the taxation of debts due its citizens from parties out of the State. *Second*, in respect to the power of the Legislature of Connecticut to authorize and require such form of taxation, it was claimed that there was no provision in the Constitution of the State limiting and defining such power of taxation. *Third*, the following characterization of the nature of a debt or a chose in action, and its suitability as a subject for taxation for the purpose of obtaining revenue, was put forward by the counsel for the State as a statement of economic conclusions worthy of full acceptance. "It [a chose in action] has not a visible, tangible

form. The note, bond, or account even, may be evidence of a debt, but it is not the debt itself. The specific money when loaned, and received by the borrower, is no longer the property of the creditor. It is soon merged in the circulating mass, and the creditor can neither identify and claim it, nor put his hand upon any property purchased with it, and say that that is his. The money may be invested in real estate, or manufacturing, or merchandising, or speculation. It may prove a profitable investment, or it may in a short time prove a total loss. It is all the same to the creditor so long as his debtor's ability to pay is unimpaired. He has simply a right to receive a given sum of money with interest or damages for its detention. It is a personal right, and accompanies the person of the creditor. The debtor is under a corresponding obligation to pay the demand. The right to receive is valuable, and through it an income is derived. *That right may with propriety be taxed.* The obligation to pay is a burden, and has never, to our knowledge, been the subject of taxation. It seems, therefore, that the appropriate place to tax money at interest is where the creditor resides, and that for that purpose it may with propriety be said to be located with the creditor." \*

The respondent attached much importance to the analogy "between a money demand, evidenced by a note or bond, and shares of stock in a corporation"; and to the fact that the United States Supreme Court had decided that "shares of stock in national banks are property, separate and distinct from the property of the corporations which they represent, and are taxable" (National Bank *vs.* Commonwealth, 9 Wall., 353).

Reference was also made to the case of *Minot vs. The Philadelphia, Wilmington & Baltimore Railroad Company*, in which the United States Supreme Court was held to have recognised a distinction between shares of railroad stock and the capital (property) of a corporation, and in respect to which it was assumed that the court maintained that the share of a stockholder is something dif-

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\* Reference in this connection is made to the opinions on this general subject expressed by the Supreme Court of California, given in the preceding chapter.

ferent from the capital stock of a company; the latter being the property of the company only, while the former is the individual interest of the stockholder, constituting his right to a proportional part of the dividends when declared and to a proportional part of the effects of the corporation when dissolved after payment of its debts. Regarded in that aspect, it was held to be an interest or right which accompanies the person of the owner and having no locality independent of its domicile.

But whether, when thus regarded, it can be treated as so far separable from the property to which it relates as to be taxable independent of the locality of the latter, was a question which the counsel of the State did not hold to be decided; but there was a strong intimation that the United States Court intended to decide that shares of railroad stock can only be taxed in the State where the owner resides.

CASE FOR THE PETITIONERS.—On the other hand, the following is a summary of the arguments and reasons advanced (mainly by one of the most learned and distinguished members of the Court of Errors of the State, and of the American bar, Hon. L. F. S. Foster, formerly president of the United States Senate and acting Vice-President of the United States), in support of the petition for an injunction in restraint of the collection of a tax upon the plaintiff:

“Taxation and protection are correlative terms. Protection to the person is the ground on which the right to tax the person rests. Protection to the business, protection to that portion of the property not taken by the tax, is the consideration or compensation for all legitimate taxation on business or on property. The person must be domiciled within the State to be subject to a personal or poll tax; the business or the property must also be within the territory of the State to confer jurisdiction over them. That the person of the plaintiff is within the jurisdiction, and subject therefore to the taxing power, is apparent from the record. This tax, however, is not imposed on the person; it is imposed on the property of the plaintiff, and as such it must be sustained, if sustained at all. The case does not require any description of the various species of property, real, personal, etc. Real property has,



of course, an immovable *situs*, and can never be subject to any taxation except that imposed by the government within whose jurisdiction it is situate. The reason is, that that government is the only one that can afford it protection. Personal property, of whatever it may consist, though capable of being transported from place to place, if it be of a visible and tangible kind, would seem, in the nature of things, to follow the same rule and for the same reason—that is, to be subject to taxation by the State within whose jurisdiction it is situate, as that State only has dominion over it, and as that State only can afford it protection.

“Now, if the property in question be considered real property, it being in the State of Illinois, any tax upon it by Connecticut would be extra-territorial and void. If it be considered personal property, of a visible and tangible character, it is still in the State of Illinois, and so just as much out of the dominion and beyond the jurisdiction of the State of Connecticut as though it were real property. If we consider the property to be an interest in real or personal property, or a title, inchoate, equitable, or legal, to such property in Illinois, such interest, or such title, is no legitimate subject of taxation in Connecticut. The *corpus* and *situs* of this property being in Illinois, and subject, of course, to taxation there because within her jurisdiction, no interest in it, no title to it, can be taxable in Connecticut. Such a claim involves one of two absurdities: either that the same property may be in two places at the same time, or that two independent governments can have jurisdiction over the same subject-matter at one and the same time.

“But the property of the plaintiff on which this tax has been imposed is not real property, nor is it personal, of the character here considered. It may be well to describe it precisely, that there may be no room for misunderstanding.

“The plaintiff loaned money in the city of Chicago, in the State of Illinois, on bonds conditioned for its repayment, and secured by deeds of trust. One of said bonds, and one of said deeds, as a specimen of all, is made part of the record. This bond declares ‘that it is made under, and is in all respects to be construed, by the laws of the

State of Illinois, and is given for an actual loan of money [\$3,000] made at Chicago, by Charles W. Kirtland [the plaintiff], to Edmund A. Cummings [the obligor] on the day of the date hereof' [July 17, 1869]. The deed of the same date is a conveyance in fee, by Cummings and his wife, of a lot of land in Chicago, to Norman C. Perkins, of said city, to be held by him in trust, as security for the payment of said loan, with power to sell and convey the same, and apply the proceeds in payment of the loan, in case of default on the part of said Cummings to perform the stipulations of said bond. It is quite obvious that Cummings has incurred a debt to Kirtland, and that Kirtland has a claim against Cummings. Cummings is the debtor, Kirtland the creditor. Has this debt a *situs*? If it has, where is it? In Illinois, or in Connecticut? The contract to loan was made in Illinois, there the creditor parted with his money, there is the property pledged for its repayment, there the debtor is domiciled, there the trustee.

"This seems to indicate Illinois as the *situs* of this debt. So far as it is a thing having a substantial existence, it is there, and not elsewhere. The Connecticut statute provides in terms, 'that money secured by mortgages upon real estate in this State shall be set in the list and taxed only in the town where said real estate is situated.' This manifestly recognises the *situs* of the property pledged as security for a debt, as the *situs* of the debt. But a debt has no *situs*. Only a material thing can have a *corpus*, and only a *corpus* can have a *situs*, for it is the location of the *corpus* that constitutes a *situs*. A debt is neither visible, tangible, nor ponderable; it has no *situs*, no *corpus*. It is a misnomer to call it property. In legal phrase it is but a *chose in action*, a *jus incorporale*. It is an equitable title in the property of the debtor, and it adheres, as a title, in the property it represents. It does not follow the person of the owner in his domicile, though he may transfer it there.

"These views are fully sustained by the United States Supreme Court, in the case of *Brown vs. Kennedy*, 15 Wall., 591.\*

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\* In this case, which covered a proceeding under the confiscation act of 1862, the United States Court rejected the theory that a

"The same court also held to similar conclusions in a number of other cases. Thus, in the case of *Pelham vs. Rose*, 9 Wall., 103, a note, the evidence of the credit, not the credit itself, was the thing proceeded against. In the case of *Pelham vs. Way*, 15 Wall., 196, where the court also held that the proceedings, not having been against either the debt or credit, but only against the material evidence of it, and that material evidence having been out of the marshal's jurisdiction, no confiscation had been effected.

"Now, if these decisions," said Judge Foster to his colleagues in the Court of Errors, "are to be recognised as law, how can it be claimed that on this credit, given by Kirtland to Cummings in the State of Illinois, secured by a deed of real estate there situate, held by a trustee resident there, the debtor being domiciled there, the debt made payable there, the laws of Illinois by express agreement to govern the contract; how (for the question bears repeating) can it be claimed that there is any subject-matter within the jurisdiction of Connecticut on which to impose a tax?"

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credit has a legal *situs* where the owner resides, and held that a bond and mortgage form of credit could be confiscated by the United States where the mortgage debtor resided, though, in point of fact, the bond and mortgage were never in the State of Kansas where the proceedings in forfeiture took place, and were, in fact, in possession of the owner, in the rebel lines, in the State of Virginia. The court accordingly passed a decree, and ordered that the said bond, mortgage, and credit be condemned and declared forfeited to the United States. The decree also ordered Kennedy, one of the obligors and mortgagors, to pay the debt into the court, for the use of the United States; and in pursuance of the decree the payment was made to the officers of the court. After the termination of the war, or in 1868, Brown, the obligee and mortgagee in this bond and mortgage, having obtained a pardon from the President of the United States, filed a bill in the United States Circuit Court for the district of Kansas against Kennedy and wife, for the foreclosure of this mortgage. The principal defence was, that the mortgage and the debt secured by it had been confiscated under the act of Congress. That, of course, put in issue the validity of those proceedings. It was admitted as matter of fact and agreed, that Brown, the complainant, was and always had been a resident of Virginia, had been a continuous resident of the State from June, 1860, to September, 1865, and neither the bond nor mortgage in question was during any part of that time in the district of Kansas,

“That the land in Illinois which is the security for this debt, and of which this debt is the representative, has borne its full share of taxes without diminution on account of this debt is not denied. If the land were in Connecticut, this would suffice; no tax could be collected on the debt. That the land is in Illinois can not affect the principle. If each State has dominion over the property, real and personal, within its territory for the purposes of taxation—and he must be a bold man who denies it—that dominion must, from its nature, be exclusive. No other State can have concurrent jurisdiction. Nor does any other State become invested with the power to tax, if the State in which the power is vested omits to exercise that power. Should a State exempt the property, real or personal, within its limits, belonging to non-residents, from taxation, by what authority could any foreign State impose taxes on such property? The question is purely jurisdictional, and the matter of double taxation is not involved. The point is not whether the State may tax a thing twice, but whether there is anything within its jurisdiction that it can tax at all.

“Resort must be had to a legal fiction to draw this debt into Connecticut. It does not appear from the record that even the evidences of the debt, the bond and deed, were held in Connecticut.”

Under such circumstances, it is curious to note, as Judge Foster especially pointed out, to what a singular and absurd hypothesis and procedure the Connecticut authorities, as if conscious that they had abandoned reason and were dealing with sentiment, had recourse in order to get a basis and a warrant for their action. They first assumed that there was an imaginary property, separate and distinct from the material property; and then gave to such imaginary property an imaginary *situs*, thus “going far into the domain of the sentimental and spiritual for the purpose of taxation.” Bishop Berkeley, it will be remembered, held to the opinion that matter does not exist, and that we only imagine that it exists; but it is not at all probable that he ever hoped, when alive, that his views would be so practically indorsed, and at so early a day, in the State of his literary adoption. He would have made, moreover, a desirable tax assessor and tax

collector under the present Connecticut tax laws ; for being logical, even if he was sentimental, he would doubtless have been willing to take the taxes in the pure product of the imagination. His successors, however, were not only sentimental but illogical ; for, not content with assuming that the imaginary is the real, they tried to do what the good bishop never would have sanctioned—namely, take something out of nothing.

But apart from these curious and novel politico-economic and legal features, this Kirtland case involves constitutional questions of the highest interest and importance—as much so, perhaps, as any case ever brought to judicial arbitrament since the formation of the Federal Constitution.

The power of the State to tax the business of loaning money, like the power to tax any business transacted within its limits, by way of license or otherwise, whether the money be loaned to parties within or without the State, is unquestionable.

But this, however, can not be exercised by a State when the business is done without the State, though it be done by citizens of the State. Citizens of Connecticut transacting business in Illinois must, therefore, be subject to the laws of Illinois, and not to the laws of Connecticut. Again, if each State of the Federal Union has dominion over the property and business transacted within its territory for the purpose of taxation, that dominion must from its very nature be absolute and exclude the dominion of any other State over the same property and business. Again, the sovereignty of coequal States involves a full recognition of the dominion and sovereignty of all sister States ; and hence section 1, Article IV, of the Federal Constitution requires that “full faith and credit shall be given to the public acts, records, and judicial proceedings of other States.” Each State, then, in entering the Federal Union, entered into a contract of non-interference with the dominion and prerogatives of other States ; and it will not be disputed that the power of taxation is an incident of sovereignty or dominion. The dominion, therefore, of one State for the purpose of taxation over persons, property, business, or the incidents of business, must exclude the dominion of other States over the same

persons, property, business, and incidents of business at the same time. Neither in constitutional law in the United States nor in mathematics can the same property, persons, business, or incidents of business occupy two places and two sovereignties at the same time. Hence, the taxation by Connecticut of credits, choses in action, bonds, notes, book accounts, verbal and other contracts, the incidents of actual business transacted in Illinois, must be in legal effect extra-territorial taxation of such business, and so an infringement and violation of the sovereignty of Illinois; or else it must be assumed that business does not include its incidents, or the whole its parts.

Furthermore, if Connecticut has the power of taxing extra-territorial contracts for the loan of money, she has the power to fix any rate and to discriminate as to the States upon whose citizens the burden shall fall; or she may adopt a rate that shall be prohibitory on contracts made by her citizens with citizens of designated States, or citizens of all the States, as her caprice may dictate.

And in this way she may obstruct and to a great extent prevent interstate commerce, which the United States Supreme Court in repeated instances (since the Kirtland case) has decided that the separate State governments can not under the Federal Constitution do either directly or indirectly.

From these considerations, reasoning, and precedents the conclusions of Judge Foster would seem to have been incontrovertible—namely, that “the plaintiff,” Kirtland, “was not liable to taxation” in Connecticut “for debts owing to him in Illinois”; and inferentially that, although possibly warranted by the letter of the statute, the act was an attempt on the part of Connecticut to exercise extra-territorial dominion over persons, contracts, or business, and was, therefore, unconstitutional and void. It would also seem to be clear that if property in action (choses in action) is made by fiction of law an *entity*, having a *situs* in one State separate from the property which it represents in another State, an opportunity for the grossest inconsistencies will be perpetrated, and the most inharmonious, arbitrary, and capricious tax laws and other laws will be enforced by conflicting legislation of

States, required by constitutional obligations to "give full faith and credit to the public acts of other States."

The Connecticut Court of Errors, however, dissolved the injunction and dismissed the petition, Judge Foster alone out of a full bench of five dissenting. An appeal being next taken to the United States Supreme Court, the latter (in 1879) affirmed the judgment of the Connecticut court, the essential points of the opinion rendered by Mr. Justice Harlan being as follows: "The debt which the plaintiff, a citizen of Connecticut, holds against the resident of Illinois is property in his hands. The debt, then, having its *situs* at the creditor's residence, and constituting a portion of his estate there, both he and the debt are, for purposes of taxation, within the jurisdiction of the State. It is, consequently, for the State to determine, consistently with its own fundamental law, whether such property owned by one of its residents shall contribute, by way of taxation, to maintain its government. Its discretion in that regard is beyond the power of the Federal Government to supervise or control, for the reason that such taxation violates no provision of the Federal Constitution; as manifestly it does not, as supposed by counsel, interfere in any true sense with the exercise by Congress of the power to regulate commerce among the several States; nor does it, as is further supposed, abridge the privileges or immunities of citizens of the United States, or deprive the citizen of property without due process of law, or violate the constitutional guaranty that the citizens of each State shall be entitled to all the privileges of citizens in the several States.

"Whether the State of Connecticut shall measure the contribution which persons resident within its jurisdiction shall make by way of taxes in return for the protection it affords them, by the value of the credits, choses in action, bonds or stocks which they may own (other than such as are exempted or protected from taxation under the Constitution and laws of the United States) is a matter which concerns only the people of that State, and with which the Federal Government can not rightfully interfere." \*

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\* 100 U. S., p. 499.



It remains but to indicate the legitimate deductions and consequences of this decision, and point out some of the circumstances pertinent to the treatment of the case when it was before the United States Court.

In the *first* place, it decided that debts are property; a legitimate deduction from which is that the creation of debts creates property, and the extinguishment or payment of debts annihilates property; a conclusion which has not received the sanction of the judiciary, or found a place in the tax system of any country other than the United States. *Second*, the decision next gave a miraculous power to residence, by making it capable of producing property out of nothing. *Third*, it sanctioned the right of a State to subject its citizens to double taxation in respect to one and the same property, and indorsed the justice and morality of the act. If the *situs* of the property—in the sense of an actuality—and the owner of a mortgage upon it, are within the territory of one and the same State, and the actuality is fully taxed by it, the separate and duplicate taxation of the mortgage would not be sanctioned except at the demand of the debtor, and which, as equivalent to his asking that the burden of his debt be augmented, he would be not likely to make. But when the actuality and the mortgage are in different States of one and the same nation, as was the situation in the Kirtland case, a different rule is held to prevail, whereby that which in one State was regarded as an incident of property, and as such properly exempt from taxation, becomes by mere transference to another State actual property, and as rightfully subject to taxation.

*Fourth*. If debts are property, and rightful subjects for taxation, the sphere of the application of this principle should not be restricted to debts created by a mortgage, but should embrace every form of indebtedness created by the loan of capital—as promissory notes, book credits, and policies of life insurance—which are valuable to just the extent that they represent the indebtedness of the company issuing them to the holder of the policy. But if all the forty-five States of the Federal Union or the different countries of the rest of the world were to undertake to pursue capital in the form of debts due their respective citizens for the purpose of taxation, the resulting inex-



tricable and disastrous confusion would be almost beyond the power of imagination.

*Fifth.* The United States Supreme Court held that there was nothing in the form of taxation involved in this case that interfered with the power of the Federal Government to regulate interstate commerce; but if, as was further held, there was no constitutional limitation on the exercise of the power of taxation by the State of Connecticut, and that the Federal Government can not rightfully interfere with the measure of taxes that a State may impose on credits and choses in action that its citizens may own, it is difficult to see why Connecticut might not impose such taxes on all extra-territorial contracts of pecuniary value as would greatly impair or altogether prevent the commercial intercourse of her citizens with the citizens of other States. Finally, nothing more clearly exhibits the anomalous issues involved in this case than the fact that it could not have come up before any of the courts of England, France, Belgium, Germany, Switzerland, Italy, or Lower Canada; for in none of these countries are debts regarded in the light of property, subject to taxation.

The following facts pertinent to the history of this case are also worthy of record: When the appeal from the decision of the Connecticut Court of Errors was made to the United States Supreme Court, one of the most distinguished members of the bar of the State of New York, who in repeated instances had commanded the respect and attention of the former court, was moved, through his abstract interest in the legal and economic principles involved in the case, to volunteer his services for its future argument and presentation to this high and final tribunal. But on the day assigned for its hearing, serious illness prevented his attendance on the court, and the case in question went before it practically without verbal argument, and mainly on the presentation of a brief. Some years after the decision was rendered, the then chief justice of the court (the late Morrison R. Waite) told the writer, in a familiar interview, that he had no recollection of the case, and expressed much interest in a presentation of the economic points involved in it.

Another fact especially worthy of the consideration of

those who have been instrumental in enacting and defending statutes in respect to taxation in the United States which find no justification in economic principles, or any parallel in the laws or fiscal systems of other countries of high civilization, is, that since the final decision in the Kirtland case, the State of Connecticut, where it originated, has derived no material advantage from it. Nay more, a somewhat extensive inquiry made of its tax officials renders it doubtful if a single extra-territorial mortgage has since been made subject to taxation as property in the form of a debt in the State of Connecticut. And the same is generally believed to be true of a vast number of mortgages of real estate—especially of farming lands of the Western States of the Federal Union—which in recent years have been negotiated and sold by the large number of the so-called “loan and trust companies” in the Eastern States. The fact is, the American people, whose interests have called their attention to this form of taxation, regard it as unequal and unjust, and so clearly in the nature of double taxation on one and the same person and property, and an exaction, that evasion of it is clearly warranted; the whole record of experience under it constituting another demonstration of the fact that under a popular form of government any law regarded as unjust or unnecessary can not be efficiently executed; and to avoid the necessity of evasion it has now become almost the universal practice, in executing mortgages in the United States, that if the mortgage is made subject to taxation the mortgagee shall pay the taxes in addition to the interest on the loan of capital represented by the mortgage.

**NOTE.**—In addition to what may be termed the historical elements of this celebrated case, the more strictly legal features of it, as set forth subsequent to the action of the United States Supreme Court, are here pertinent and worthy of consideration:

No. 1. This case seems from its very nature to involve questions of conflict of State dominion. It is admitted that Mr. Kirtland, the plaintiff, so far as the question of taxation at issue is concerned, has not been assessed and taxed upon his body, person, poll, or head, or for any substance, the embodiment of labour, and which alone constitutes property, owned or possessed by him within the territory of Connecticut; nor for any business transacted by him within the State. The plaintiff has, however, been assessed and taxed for dealing in money or doing the business of loaning money,

by an assessment and taxation of bonds and mortgages made in Illinois—the necessary incidents and evidence of the business of money lending, performed by himself or through a resident agent in the State of Illinois. It is conceded that the loans were actually made at Chicago in the State of Illinois, as the bonds and mortgages taken state that all the business and acts connected with the loaning and reloaning were actually done, from time to time, there, that the obligations were payable there, and that the contracts of loan were strictly Illinois contracts, to be interpreted as valid or invalid and as to their force and effect according to the laws of that State.

The State of Illinois imposes a tax on resident agents making loans in that State; but it is not important to inquire whether in this instance the business of loaning was done through a resident agent or what that State does actually tax, but what she can constitutionally tax by virtue of her dominion and sovereignty. Illinois can undoubtedly tax, if the tax is not discriminating but uniform on residents and non-residents, all occupations and also all business transacted within her borders. She can tax money dealers or money lenders by license or otherwise, and she can impose stamp or other taxes and to any degree, in her discretion, on all contracts at the time when made within her jurisdiction. No other State has concurrent jurisdiction over any legitimate subject of taxation within her jurisdiction. Her sovereignty in taxation is absolute except as limited by the national Constitution. But the sovereignty of coequal States involves a full recognition of the dominion and sovereignty of all sister States, and hence section 1, Article IV, of the United States Constitution requires that "full faith and credit shall be given to the public acts, records, and judicial proceedings of other States." This is a compact of non-interference in the dominion of other States in matters of taxation or in reference to other subjects of State dominion. The power of taxation is an incident of sovereignty or of dominion. The dominion, therefore, of one State for the purpose of taxation over persons, property, or business, or the incidents of business, must exclude the dominion of other States over the same persons, property, business, and incidents of business at the same time. Neither in constitutional law in this country nor in mathematics can the same persons, property, business, and incidents of business occupy two places or sovereignties at the same time. The taxation by Connecticut of credits, choses in action, bonds, notes, book accounts, verbal and other contracts, the incidents of actual business transacted in Illinois, must be in legal effect extra-territorial taxation of a part of such business, or otherwise it must be assumed that the incident is not a part of the principal. The making of contracts is of itself a business in the strictest sense, nor can any business exist without the power to make contracts written or verbal. Money can not be loaned unless there is a business of lending money, and for the time being the vocation of a money lender. The amount or duration of a business in a State can have no influence on the question of the jurisdiction of the State over the business or the transaction. A State can tax all sales at auction, including the sales of goods in unbroken packages

owned by nonresidents and just brought into the State and sold by nonresidents or by resident agents (*Woodruff vs. Perham*, 8 Wallace, 123). In New York mere wandering peddlers are taxable on money invested in business in every town in which they peddle. If actually assessed in more than one town the same year the remedy is to appeal to the assessors (*Hill vs. Crosby*, 26 Howard, par. 413). It would seem that business, occasional, transient, or permanent, transacted in a State by a resident or nonresident, by the force of State sovereignty, may be made subject to a uniform rule of taxation.

Extraterritorial taxation can have no force in American jurisprudence. Protection and taxation are correlative terms. Protection to that portion of property not taken or absorbed by the tax is the consideration or compensation for all legitimate taxation, and extraterritorial taxation is therefore a mere arbitrary "taking of private property without due process of law." When property is not protected by the law of a country or of a State and beyond the process of its courts, there can be no power to tax it (this principle is manifestly as applicable to business as to property—*Rice vs. The United States*, 4 Wheaton, 246). In the foreign-held bond case, 15 Wallace 319, the United States Supreme Court said that "property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised. Indeed, it would seem that no adjudication should be necessary to establish so obvious a proposition. The power of taxation, however vast in its character and searching in its extent, is necessarily *limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business.*"

These admitted facts and the opinions cited indicate that Connecticut is endeavouring in this case to enforce an extraterritorial tax on extraterritorial business, and a further consideration of the subject might here be dismissed, but a more detailed examination may show more clearly the unconstitutionality of this arbitrary exaction.

**EFFECT OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES IN RESPECT TO THE ARBITRARY APPROPRIATION OF PROPERTY BY TAXATION OR OTHERWISE.**—Another point preliminary to reform, and in respect to which it is important that there should be a clear understanding on the part of the people, is that there is a broad and philosophical distinction between "taxation" and "arbitrary" taking. It is often assumed that a State, because of its sovereignty, may, through form of law and delegated authority, deal with the persons and property of its subjects as it may see fit; and, repugnant as this assumption is to the principles which are assumed to constitute the foundation of all free

government, it is not to be denied that previous to the adoption of the fourteenth amendment of the Constitution of the United States in 1868, it would be difficult to show that restraint existed upon the complete sovereignty of the States of the Federal Union over persons and property within their unquestioned jurisdiction; the right to hold a certain class of their population in slavery, and the right to take private property for public purposes without making any compensation, being illustrative of the exercise of such arbitrary powers in the utmost extreme. But since the decision of the United States Court in the Kirtland case, the same court has for the first time given a decided opinion on this subject, unmistakably as follows: "There is no such thing in the theory of our Government—State or national—as unlimited power in any of these branches. The executive, the legislative, and the judicial departments are all of limited and defined powers. There are limitations of power which arise out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all free governments entitled to the name. *Among these is the limitation of the right of taxation*" (Loan Association *vs.* Topeka, 20 Wallace, 658).

In connection with this general subject, the opinion expressed by Chief-Justice Marshall is also historically worthy of notice. It had its origin in the case of *Baron vs. The Mayor of Baltimore*, in which the city of Baltimore, in the exercise of its corporate authority over the harbour, etc., so diverted certain streams of water that they made deposits of sand and gravel near the plaintiff's wharf, and thereby prevented the access of vessels to it. A writ of error was taken from the judgment of the Maryland Court of Appeals, refusing damages, to the Supreme Court of the United States, on the ground that this decision was in violation of the fifth amendment to the Constitution of the United States, which prohibits the taking of public property for private use without just compensation; the plaintiff contending further, "that this amendment, being in favour of the liberty of the citizens, ought to be so construed as to restrain the legislative power of a State, as well as that of the United States."

The court, however, by Chief-Justice Marshall, held that this amendment of the Constitution "*is intended solely as a limitation on the exercise of power by the Government of the United States, and is not applicable to the legislation of the States*"; which was equivalent to saying, viz., that if the several States choose to arbitrarily take or confiscate the property of any of its citizens, there was no higher sovereignty to restrain them.

At the close of the late civil war, however, when it was deemed desirable by Congress to impose some restrictions on the reconstructed States, so as to prevent the former disloyal element of their population, in the event of the contingency of regaining legislative power, from dealing arbitrarily or unjustly with any class of their fellow-citizens who might happen to be obnoxious, the following clause was made a part of the fourteenth amendment, and through its adoption has become the supreme law of the land: "*Nor shall any State deprive any person of life, liberty, or property without due process of law.*"

Now, the force of this amendment obviously depends upon the meaning of the last clause, "*due process of law*"; and it is also clear that "*due process of law*" does not mean a procedure in conformity with *any* law which a State Legislature might enact, or with any provision which the people of a State might put in their Constitution; for if such be the interpretation of this phrase, then this clause of the fourteenth amendment referred to would practically read as follows: "*Nor shall any State deprive any person of life, liberty, or property, except in conformity with such laws as it may enact.*"

The general meaning of the phrase "*due process of law*," and of the synonymous expression "*law of the land*," has, however, been made so often the subject of discussion and legal decision as to be in no sense a matter of doubt. Mr. Webster, in the Dartmouth College case, defined these terms as follows: "By the law of the land is most clearly intended the general law, which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Everything which may pass under

the form of an enactment is not the law of the land." And in commenting on this definition, Justice Cooley, in his treatise on Constitutional Limitations, uses this language: "This definition of Mr. Webster is apt and suitable as applied to judicial proceedings, which can not be valid unless they proceed upon inquiry, and render judgment only after trial. It is entirely correct, also, in assuming that a legislative enactment is not necessarily the law of the land. The words 'by the law of the land,' as used in the Constitution, do not mean a statute passed for the purpose of working wrong. That construction would render the restriction absolutely nugatory, and turn this part of the Constitution into mere nonsense. Due process of law," therefore, continues Judge Cooley, after reviewing the interpretations of various other authorities, means "such an exertion of the powers of the Government as the settled maxims of law sanction, and under such safeguards for the protection of individual rights as these maxims prescribe."

"The very idea of taxation, the very elements of the terms tax—taxation—implies that it is an imposition or levy upon persons or property in due course or order, treating all alike in the same condition and circumstances. The burden of taxation must be equalized by this mode in order to preserve its character. It is in any view taking private property for public use; and it can not be so taken without an equivalent both as to the Government or the citizens. It is not competent for the Government to convert private property to public use, by way of taxation and without compensation, any more than by any other mode."—*Redfield*.

Now, the exact applicability of the fourteenth amendment in restraining the several States in the exercise of their so-called "taxing powers" would appear to be this:

Taxation implies protection. It is held by every authority to be the equivalent for the protection which the Government affords to the property of its citizens. When, therefore, a State (like Connecticut) taxes property, either directly or indirectly, out of its territory and jurisdiction, which it can not protect, and which its processes can not reach, the act is not taxation, but a mere arbitrary exercise of power; not in accordance with any "process



of law," and forbidden by the Constitution of the United States, and as involving a principle under the Constitution. Furthermore, the question of restraining a State from the exercise of such arbitrary powers would seem to be one legally within the right of any citizen aggrieved, in virtue of the fourteenth amendment, to carry from the courts of his own State to the Supreme Court of the United States. As another method by which a citizen of a State aggrieved by the imposition of an *ex-territorial tax* might test the constitutionality of the same, the following is also worthy of consideration:

A citizen of Connecticut, for example, taxed on personal property in Illinois, might obtain a writ of *certiorari* in an Illinois court, and raise the question that, inasmuch as personal property is held in law to follow the person, the property in question was not taxable in Illinois. And after the courts of Illinois had rendered an adverse judgment, as they undoubtedly would, the owner taxed for the same property in Massachusetts could obtain a writ of *certiorari* in the courts of that State, and raise the following questions:

1. Want of jurisdiction in respect to the property on the part of the State of Massachusetts.

2. Violation of the Constitution of the United States in denying full faith and credit to the "public acts (tax laws of Illinois) and judicial proceedings" of a sister State.

It needs no argument to prove that under the provisions of the Constitution of the United States, above referred to, both the laws and judicial proceedings of one State are as valid and as much to be respected in another State as the laws and judicial proceedings of the latter State itself. If the courts of Massachusetts, following precedents in that State, should decide that personal property situated beyond the State follows the person residing in Massachusetts, and so disregards the judicial proceedings and public acts of Illinois, a question under the Constitution of the United States would arise, which would give jurisdiction in the United States Court. And as one and the same thing can not occupy two places at the same time, the Federal court must finally decide in which State is the *situs* of the property for taxation in the case pre-



sented. The principle involved in this case would seem to be identical with an attempt on the part of a State to convict a citizen for an offence committed beyond her jurisdiction, in respect to which judgment had already been rendered in a sister State, where the offence had been committed.

As further bearing upon this subject, reference is made to the following judicial decisions: The Court of Errors of New York, some years ago, decided that private property could not be forcibly taken for a private road, even if compensation was made by the party benefited, because the act was the taking property arbitrarily, and not according to due process of law.

The national bank act acknowledges, and the courts of the United States have so held, that a bank has a *situs* and its shares a *situs* where the bank is located, and not where the stockholders reside. The national bank act, therefore, discards the usual State principle of taxation, that personal property follows the owner.\*

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\* See the case of Northern Central Railroad *vs.* Jackson, cited in Chapter XX, p. 448.

## CHAPTER XXIV.

### THEORY AND PRACTICE OF INCOME TAXATION.

COMMENCING with first principles, the general taxation of incomes is theoretically one of the most equitable, productive, and least exceptionable forms of taxation. What can be fairer than that each citizen should annually contribute an equitable and just portion of his net gain or income for the support of the government or State under which he has elected to live, and in default of which he would not be likely to have either gain, income, or property? and such a method of supporting a government would therefore seem to be in accord in the highest degree with those canons or maxims of taxation which are regarded by nearly all economists and jurists as the highest embodiment of human wisdom on this subject.

And yet the proposition is hardly open to dispute that a general income tax, with such administrative features as are essential to make it desirable as a revenue measure, can not be successfully administered under a free and popular form of government. On this point the comparatively recent experience of the United States, which few now remember, ought to be most instructive. Thus, in 1869, under a Federal law assessing all incomes in excess of \$1,000, and with a corps of trained officials to execute it, only 259,388 persons out of a population in that year of about 37,000,000 acknowledged the receipt of any taxable income; and in 1872, when the exemption had been raised to \$2,000 and the population had increased to over 39,000,000, the number of persons who had an income tax ran down to 72,949—leaving a presumption that every one of those who did not pay and was made subject to inquisition by the officials in respect to his income, made oath that he was not in receipt, from wages, salary, interest, or profits, of an income liable to taxa-

tion in excess of \$2,000. From an economic point of view it would be a misnomer to call such a result "taxation"; from a moral point of view its characterization as "appalling" would not be inappropriate.

Another point which may also be accepted as theoretically beyond dispute is, that if all were willing to live up to and carry out the correct and rational theory of an income tax, there would be little use for tariffs, custom-houses, internal-revenue departments, and excises. But that is exactly what human nature, as we find it, will not agree to have done in the one case, or to do in the other. In fact, there is hardly any other one thing which human nature so much dislikes to do as to pay taxes, although it is capable of demonstration, even to a most obtuse intellect, that there is no one act which can be performed by a community that brings in so large a return to the credit of civilization and general happiness as the judicious expenditure for public purposes of a fair percentage of the general wealth collected under an equitable system of taxation.

Now, an income tax is the very essence of personal taxation, and although in respect to a specialty of application it has been decided by the Supreme Court of the United States not to be a direct tax, it comes to the ordinary taxpayer most directly; and this is the first or one of the most influential reasons why it is not liked. The world's experience is to the same effect in respect to a "poll" or "head" tax. This in a popular sense is almost universally regarded as a direct tax, and altogether personal in its incidence. It has accordingly always been most unpopular. Its collection has been the occasion of great civil disturbances in the world's history, and it has been denied a place by popular vote or constitutional provision, in the tax system of most of the States of the Federal Union.

A second and more important reason why a general income tax powerfully antagonizes popular sentiment is that its efficient administration, or revenue productiveness, requires that every person liable to taxation in respect to his annual net gains, profits, or income shall make to a Government official an exhibit of the financial condition of his estate, business, or profession; for, in default of

such an exhibit, any basis for assessment must be a mere matter of conjecture on the part of the assessor, with a result devoid of any pretence to correctness or equality. But such an exhibit, necessarily disclosing to a greater or less degree his financial condition to his business competitors, and to a curious, gossiping public, no man will willingly make; and he naturally regards it as in the nature of an outrage on the part of the government that seeks to compel him to do it. Hence the successful administration of an income tax involves and requires the use of arbitrary and inquisitorial methods and agencies, which, perfectly consistent with a despotism, are entirely antagonistic to and incompatible with the principles and maintenance of a free government.

Practically, as John Stuart Mill has expressed it, "the fairness which belongs to the principle of an income tax can not be made to attach to it in practice"; and, "while apparently the most just of all modes of taxation, it is in effect more unjust than many others that are *prima facie* more objectionable." And again he says, "The tax, on whatever principles of equality it may be imposed, is in practice unequal in one of the worst ways, falling heaviest on the most conscientious," and "should be reserved as an extraordinary resource for great national emergencies, in which the necessity of a large additional revenue overrules all objections."

Mr. Gladstone, speaking in 1853, also said, "I believe it" (an income tax) "does more than any other tax to demoralize and corrupt the people." And Mr. Disraeli subsequently in Parliament expressed his agreement with Mr. Gladstone by saying, "The odious features of this tax can not by any means be removed or modified"; and with these opinions nearly all educated financiers and economists are in complete unison, except a comparatively few persons who, educated in Germany, have embraced the idea that because income taxes are effectively collected in countries having a despotic form of government, they can be equally collected in countries under a popular government.\*

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\* As the opinions of English authorities (above referred to) have been disparaged on the ground that they represent old-time utter-

In support of these conclusions attention is asked to the following historical evidence. It is well known that one of the principal causes which led to the great French Revolution was the inequality (class exemptions) and multiplicity of taxes; and one of the first acts of the National Assembly of 1789 was to repeal all inquisitorial and arbitrary taxes of every name and nature.\* And although, from that day to this, France, by reason of a national debt greater than that ever borne by any other nation, has been compelled to resort to almost every expedient for obtaining revenue, it has, theoretically at least, endeavoured to maintain a system of general taxation not inconsistent with the above principle.

Under the head of indirect taxation, however, which includes the general direction of the stamp tax, "domainal public land" revenues, customs, duties on imports, salt and sugar taxes, and monopolization of the manufacture of powder and the sale of tobacco and matches, the so-called communes of France have a right to "levy a tax of three per cent on the annual income (interests, dividends, etc.) of personal property, such as French or foreign securities, shares, bonds issued by departments, industrial establishments, independent of the stamp or transfer tax, but not affecting the bonds of the state (or rentes), nor associations of partnerships in a collective name, nor private obligations, mortgages, and the like." "Religious societies are taxed five per cent on the income of their capital." In 1886 the revenue derived from the above taxes was returned at 47,200,000 francs (\$9,400,000), representing in 1886 a capital of 1,500,000,000 francs, of which 131,000,000 francs represented properties situated in France.

The following sentiment or legal principle, laid down

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ances and imperfect fiscal experiences, attention is here asked to the following extract from a letter of Prof. Thorold Rogers, late member of the British House of Commons and Professor of Political Economy, University of Oxford, under date of August 25, 1884: "Nobody defends the income tax. It was first imposed on the tyrant's plea that the administration can not do without it, and it has been continued for the same reason. Every Chancellor of the Exchequer has condemned it in principle and has continued it in practice. It is not wonderful, therefore, that, fortified by these avowals, people who can evade the tax do so."

\* See *ante*, p. 117.

by the United States Supreme Court in the case of *Boyd vs. United States* (116 United States Reports, 631, 632), though often apparently little regarded by the legal profession, would, however, seem in itself to constitute a complete and insuperable barrier against any resort in the United States to the prosecution of arbitrary or inquisitorial inquiries, which must of necessity be instituted and prosecuted by tax officials for the obtaining of any personal and warrantable data for the correct assessment of an income tax, the language of the court being as follows:

*“Any compulsory discovery, by extorting the party’s oath or compelling the production of his private books and papers to convict him of a crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman. It is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it can not abide the pure atmosphere of political liberty and personal freedom.”*

So much, then, for what may be termed the philosophy of an income tax. Consideration of some of its most instructive experiences is next in order.

The old Romans, who never gave much place to sentiment in their laws or policy, had an income tax in the days of the empire, and they overcame all difficulties connected with its administration in the following manner: They authorized their tax officials, in cases where the citizen did not in their opinion make a satisfactory payment, or was suspected of false statements in respect to his income or property, to administer torture; and the historian Gibbon, in writing about this feature of Roman history, justifies it in a measure in the following language:

*“The secret wealth of commerce, and the precarious profits of art and labour, are susceptible only of a discretionary valuation; and as the person of the trader supplies the want of a visible and permanent security, the payment of the imposition, which in the case of a land tax may be obtained by the seizure of property, can rarely be extorted by any other means than corporeal punishment.”*

That the Roman income-tax system was successful as

respects revenue is probable, but it was also destructive of the state; for the testimony of history is that its people finally welcomed the inroad of the barbarians as a lesser evil than the continuance of their tax system.

As already intimated, there has been nothing corresponding to a general income tax, with personal inquisitorial features, in the fiscal system of France since the Revolution of 1789. In place of it, taxes are levied on the *indicia* or signs which each citizen presents of his possession of income or personal property; and the rents or rental value of the premises he occupies for residence or business, and the doors and windows of buildings, are regarded as such signs or *indicia*. This tax applies to the doors and windows into streets and courtyards and gardens of houses or workshops. In general, all openings giving light or air to houses and buildings for human habitations, shops, workshops, sheds, warehouses, etc., are taxable, whatever their shape, dimensions, or fastening may be. Thus, all openings to afford light to the stairs, to a habitable room opening on a covered yard, of a habitable house used for rural purposes, or the door of a garden leading to a dwelling, all are taxable. The openings to new buildings become taxable as soon as they are habitable. If at the time of making the tax roll some rooms in a new house are not yet habitable, the openings of such rooms are for the time exempt. If the entire front of a room or *atelier* consists of windows, the number of windows to be taxed is determined by their solid divisions of either iron, wood, or stone. Exempt are the doors and windows to light or air of barns, sheepfolds, stables, cellars, etc., not intended for human dwelling. Further exempt are doors or gates not locked; also interior doors of communication from one yard to another. Doors as well as windows of manufacturing establishments are not taxable except to those in the dwelling part.

Again, what is called a *mobilier* tax of France is governed by the amount of rent paid or the rentable value of the dwelling of the taxpayer. That portion of a house used exclusively for trade or a similar purpose and not for a residence is not counted in the valuation of the rentable value like a furnished house or a private chapel; but premises or dependencies of dwelling houses, courts,

stables, and carriage houses of luxury, clubs, societies, and Masonic lodges are counted in.

In assessing the mobiliary tax it is not necessary that the figures taken as a basis for taxation should be the real rent; it is sufficient that the proportion of the assumed rent, the basis of the tax, and the real rentable value of the dwelling should be exactly the same for all taxpayers; so that a taxed citizen can convince himself whether he is overtaxed or not by comparing his own rent with that generally charged in his community.

The theory which underlies the French system of taxation is that the rent or rental value of the premises occupied by the taxpayer as a residence is proportioned to the amount of his property; and this, generally speaking, would seem to be a not unreasonable assumption. At all events, it would seem to possess this great advantage—namely, that the rent payable by every citizen may be readily ascertained, while the amount of his means can not, if he chooses to conceal it.\*

NOTE.—M. Yves Guyot, in a report recently made on questions connected with proposals relating to the establishment of an income tax in France, regards the great fiscal wrong in that country to be the inequality of the assessments of real property in the different departments. This is increased by the fact that the French land tax is not levied at the same rate on all property, but the proportion of the whole amount which is to be paid by each department is fixed by the central authority; the departments allot the quotas to be paid by the several communes, and the communal authorities apportion their quota among the individual taxpayers. The tax is, to use the French technical term, one of *répartition* and not of *quotité*. If it were the latter, each taxpayer would pay in proportion to his property; the rate of the

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\* The following epitome which has been recently made of the burden of taxation imposed upon an honest taxpayer in New York as compared with that which is borne by a man possessed of the same means or income in the city of Paris is believed to be approximately correct:

“Let us assume that the property of such an individual, if out of business, consists of personal estate, such as railway bonds and stocks of the value of \$100,000, that the net annual income therefrom is \$5,000, and that the rent paid by such individual amounts to one fifth of his income, equal to \$1,000, or that being engaged in business his average annual profits enable him to occupy an apartment of the same rental value. In Paris the party in question would have to pay as *contributions mobilières* about 400



tax would be fixed by the Government instead of the amount to be raised from each department. The valuation on which this tax is levied is the net annual value, and was fixed unsystematically and imperfectly from fifty to seventy years ago; the value of real property has changed, but the original assessment is still in force. The result is that some departments pay from six to eight times as much as others in proportion to their real annual value.

M. Guyot advocates a tax on the capital in place of on the annual value. There is, as he points out, a manifest injustice in taxing the same amount of capital at different rates, according to the mode in which it is invested. In France a capitalist might invest his money in building lots or other land temporarily unproductive, but held for resale at a profit. The investment, yielding no income, would practically escape taxation. If the same sum were invested in safe securities yielding an income of three per cent, the tax would be levied on that income, while if placed in business where, though it might temporarily yield twelve per

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francs, or, say, \$80, or, including his door and window tax, which he pays through his landlord, say, \$90. If engaged in business or practising a profession, he would have to pay a license tax or *patente*, which varies from 100 to 1,000 francs (we are speaking, of course, of the mass of the people, and not of merchants or companies occupying very extensive and costly premises, whose *patente* may run up to several thousand francs, and whose taxes are payable out of the profits of their business, and not out of the income derived from their investments). Such householder thus pays on an average, say, 1,000 francs as the total of his direct taxes. Supposing him to pay the sum of 1,000 francs indirectly in the shape of *octroi* duties on the provisions consumed by himself and family in the course of the year (and this allowance we consider a very liberal one), we find the total amount of his annual taxes, direct and indirect, to be, say, 2,000 francs, or \$400; while in New York a person similarly situated would have to pay, if he made an honest and full declaration of his property, about 2.6 per cent on his principal, making, in the present case, his tax amount to \$2,600. Even if we assume that the Parisian pays an additional \$200 per year on an average in the way of succession and other exceptional taxes, his contributions to the expenses of the Government would be at the utmost only \$600 in place of the \$2,600 levied upon the unfortunate New-Yorker.

"In return for what he pays, the Parisian enjoys well-paved and well-cleaned streets, wide and unobstructed sidewalks, shade trees with benches under them for the weary, public gardens kept in beautiful order, etc., while the New-Yorker gets—well, the less said on this subject the better. May we not entertain the hope that honest men of all parties will soon unite to secure a better system of taxation and a more efficient administration of the government in the most populous and wealthy city of the model republic? or must we accept as a melancholy truth that universal suffrage inevitably results (at least in American cities) in rabid democracy, dishonesty, and dirt?"

cent, the loss of the whole would be risked, the owner would pay four times as heavy a tax as in the previous case.

The same objections have been frequently urged against the income tax in England, but there a difficulty exists in the way of assessing the capital value of land—viz., that land is generally the subject of letting and seldom of sale. In France, however, not only are there nearly a million sales of land each year, but on every devolution by inheritance the capital value of the land is officially registered. The ascertainment of the capital value of the entire country would be an easy matter, and such an assessment would be of more durable benefit than an official estimate of the annual value, which, necessarily varying from year to year, would be a much more fluctuating and uncertain basis for taxation than the selling value.

The reforms proposed by M. Guyot would increase the land tax in those departments which are undervalued; and he estimates that a revaluation for taxation would cost ten million dollars, and that it would take ten years to complete. He thinks the complaint by landowners of overtaxation generally is unfounded; but he would nevertheless relieve them in the interest of free-trade principles from the vexatious and heavy duties on transfers, which, with legal expenses, make the cost of sales amount to ten per cent of the price paid. This heavy impost prevents sales, and its removal should be supplemented by establishing a simple system of transfer on the record-of-title principle. These reforms, which involve equality of taxation and free trade in land, are, in M. Guyot's opinion, essential to the well-being of France, whose greatest wealth consists in her land. Fifty per cent of the population are engaged in agriculture, and, without releasing them from their fair share of the public burdens, they should be placed in such circumstances as will permit land to pass into the possession of those who are most capable of working it to advantage. (*Rapport sur les questions relatives à l'impôt sur le revenu.* Par Yves Guyot. Paris: Guillaumin & Cie. 1887.)

Russia seems to have abandoned the idea of an income tax, and in place of it would appear to have substituted what is known as a "hearth" tax, which is collected from each separate building inhabited, or used for any commercial or industrial purpose.

An income tax has existed in Austria-Hungary since the beginning of the nineteenth century. It was repealed in 1829, and re-enacted in 1849. This tax is divided into three classes. "Under the *first* class, the tax in force in 1887 was from eight and a half per cent to ten per cent of net income." Under this class the following income was taxed: income derived from all those trades and occupations which are subject to a license tax; the income of mining and smelting establishments, and the profit

made by the tenants of agricultural lands. In the *second* class, which includes income from services rendered or labour performed in occupations not subject to a license tax, the rate reported is exceptionally high. Under the *third* class, which embraces interests from loans, from invested capital, savings banks, and life-insurance companies, the rate is reported to be ten per cent. The exemptions under this latter head are very extensive, and include the pay of officers and soldiers in active service, interest on deposits in savings banks, and a great number of public securities—as five per cent Austrian stocks and bonds, certain bonds of the Tyrol, bonds of all railroads subject to taxation, lottery loans of 1859 and 1860, and a large number of other corporation securities.

Servants are only taxed under the second class and in case their total income exceeds six hundred and thirty florins (\$226.16).

In case a party subjected to an income tax makes either a false return or neglects to make any, thrice the amount of the tax is imposed, the payment of which, however, includes the tax itself, so that the fine proper is double the amount of the tax.

DENMARK.—The income tax of Denmark was recently fixed at two per cent of the taxpayer's income. The tax is collected by authorized agents, who are obliged to give ample security for the faithful performance of their duties, for which they receive a remuneration of two per cent on the amount collected, together with an allowance for house rent in return for the obligations imposed upon them of having residences and offices in the taxing districts. This income tax does not seem to be objectionable in the sense of undue burdensomeness, the only complaints made being in regard to the publicity of the pecuniary conditions of the individuals taxed.

SWITZERLAND.—A resort to an income tax for the purpose of defraying state expenditures seems to find especial favour in Switzerland, though it does not seem probable that the systems adopted for its enforcement will ever be found satisfactory to the people of other countries. Thus, in the taxation of incomes, the average rate does not generally exceed four or five per cent, but in some cantons the rates run as high as seven and even ten per cent.

By a comparatively recent law established in the canton of Vaud, which in point of population and wealth ranks third in the Swiss confederation, progressive taxation has been established, and the property of the canton is divided into three classes which are taxed in the following proportions: One per cent 1,000 for estates under \$5,000 capital value;  $1\frac{1}{2}$  per cent 1,000 between \$5,000 and \$20,000, and 2 per cent 1,000 for estates exceeding \$20,000 in value. Personal property is divided into seven classes, the lowest class being under \$5,000, the highest exceeding \$160,000 capital value. The rates of taxation on these classes are to be in the proportion of 1,  $1\frac{1}{2}$ , 2,  $2\frac{1}{2}$ , 3,  $3\frac{1}{2}$ , and 4 per cent 1,000. Incomes from earnings are also divided into seven classes, but in arriving at the net amount to be taxed, a deduction of \$80 is allowed for each person legally dependent on the head of the family for his support. The result of this is that while a bachelor earning \$1,000 a year would pay a tax of \$15, a married man with the same income and ten children would pay but fifty cents, and if he had twelve children nothing. The Vaudois law was carried by overwhelming majorities when submitted, as was necessary, to a "referendum" vote of the whole people, and at every subsequent stage of its progress.

The only one of the great governments of the world at the present time which can prefer a claim to a large measure of success in administering an income tax is that of Germany, and especially that of the kingdom of Prussia; and the methods by which such success has been attained, and which seem to be based on the precedents established by the old Romans so far as the changed conditions of civilization will permit, ought to be most instructive to those who think this tax can be administered and made notably productive of revenue in the United States. The tax in Germany is levied, as it were, in duplicate, or under two forms: first, by towns and cities, and termed "communal"; and, second, by the state, under the designation of "class" tax. An entire exemption from these taxes is granted only to the very poorest and humblest of the population.

"Petty hucksters with a small stock of potatoes, second-hand clothes pedlars, servant girls earning four dollars and twenty-five cents a quarter, pay the communal

tax, and are also inscribed in the first (or lowest) grade of the class tax." \*

Every foreigner staying in Prussia more than one year, but with no intent of becoming a permanent resident, must expect to be taxed on his income at the expiration of the first year, although none of the sources of such income may be within the territorial jurisdiction of Prussia. Up to the year 1891-'92 the income tax of Prussia was levied by a board of income-tax commissioners, one third of whom were appointed by the authorities and two thirds by the taxpayers. The assessing was done by the board on information and evidence obtainable; and in the absence of authentic proof as to the amount of annual income, "circumstantial and hypothetical evidence was accepted." Parties thus assessed might appeal from the conclusions of the board to another tribunal organized for that purpose, whose decision was final. Appeals are not often made to this latter board, as the methods adopted by it to bring unwilling or evasive taxpayers to terms are harsh and inquisitorial in the extreme and most peremptory. The mode of proceeding against delinquent taxpayers is very summary. If after three days' written notice payment fails to be made, a mandate is issued by the tax collector, and the property of the delinquent, especially his household goods, is seized and sold. By another curious provision in the German tax law the collector of taxes is made personally liable for any taxes lost by reason of his failing to mercilessly enforce the collection within a prescribed period. In 1891 some mitigation of the harsh proceedings involved in the assessment of the income tax in Prussia was made by the Government, and now every taxpayer is allowed to make a return.

GREAT BRITAIN.—The idea of a general income tax as a means of raising revenue was first embodied in the form of a statute in Great Britain under the administration of Mr. Pitt, in 1798, and was proposed and advocated solely as a means for obtaining additional revenue for the prosecution of the war with France. It imposed a tax of ten per cent on all incomes in excess of £200 (\$1,000). After the Peace of Amiens, in 1802, it was repealed on the

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\* United States Consular Reports, Nos. 99, 100, p. 461.

ground that a tax of this character ought to be exclusively reserved for the exigencies of war; and for a like reason it was reimposed on a revival of the war during the following year. Subject to various modifications, it formed an important constituent of the fiscal system of Great Britain until after the battle of Waterloo and the peace of 1815, when it was again repealed. After this, nothing more was heard about it until 1842, when Sir Robert Peel reimposed it as a merely temporary measure—i. e., for a period of five years. It has, however, since remained a permanent feature of the British fiscal system, although its repeal has been promised and anticipated by various administrations, and in the general election of 1874 Mr. Gladstone, in an address to the country, especially asked that the confidence and continued administration of the Government be given him on the ground that he contemplated an early repeal of the income tax. Circumstances, however, have prevented any such action, and in subsequent years of office Mr. Gladstone has not hesitated to raise the tax whenever the necessity of additional revenue for the Government became imperative. That he has regretted his inability to abolish it is evident from his saying, in his financial statement in 1853: "I think some happier Chancellor of the Exchequer may achieve this great accomplishment, and that some future poet may be able to sing of him:

*"He took the tax away,  
And built himself an everlasting name."*

From the outset the income tax has been more odious and unpopular in Great Britain than any other form of taxation. Among statesmen and economists there is hardly any dissent from the opinion that the tax is bad in principle, because unequal and unjust in its assessment, and incapable of being made equal and just; and this, too, although the administration of the revenue laws of Great Britain—owing to the comparatively small area of territory subjected to supervision, and the fact that the tenure of office on the part of officials is dependent solely on honesty and intelligence—is wonderfully efficient, far more so than can be expected under existing conditions in the United States. The annual reports of the British Com-

missioners of the Inland Revenue always mention extensive evasions of the income tax. For the year 1864-'65 the amount of such evasion was estimated to have been equal to about one sixth of the revenue collected under it. The demoralizing effects which are inevitably produced by the habit of making false returns respecting income are regarded by many British authorities as far more deplorable than those resulting from any inequality contingent on this form of taxation; as the transition from a fraud upon the Government to a fraud upon the public is comparatively easy. The reported product of the income tax of Great Britain for 1893-'94 was £15,200,000 (\$76,000,000); an amount beyond the estimate.\*

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\* The following incident, which has become a part of English political history, is curiously illustrative of the state of public opinion in England at the time of the first imposition of the income tax under the statute of Mr. Pitt, and is derived from the memoirs of John Horne Tooke:

Mr. Tooke was an Englishman who participated actively in British politics during the last third of the last century. He early espoused the side of the Americans in their struggle for liberty, and was persecuted, fined, and imprisoned by the British Government for publishing an advertisement for a subscription for the widows and orphans of the Americans "murdered by the King's troops at Lexington and Concord." After his release from prison he naturally, and in connection with John Wilkes, made himself politically disagreeable to the Government, and the Government in turn made itself disagreeable to him; and accordingly the office of the commissioners for carrying into execution the act for taxing incomes addressed Mr. Tooke the following letter:

*" May 3, 1799.*

"SIR: The commissioners having under consideration your declaration of income have directed me to acquaint you that they have reason to apprehend your income exceeds sixty pounds a year. They therefore desire that you will reconsider the said declaration and favour me with your answer on or before the 8th inst.

"I am your obedient servant,

"W. B. LUTTLEY, *Clerk.*"

To this Mr. Tooke replied:

"SIR: I have much more reason than the commissioners can have to be dissatisfied with the smallness of my income. I have never yet in my life disavowed or had occasion to reconsider any declaration which I have signed with my name. But the act of Parliament has removed all the decencies which used to prevail among gentlemen, and has given the commissioners (shrouded under the signature of their clerk) a right by law to tell me that



**THE UNITED STATES.**—The income-tax experiences of the United States are so little in accord with those of any other people or countries that their consideration with a view of obtaining a practical acquaintance and comprehension of the whole subject would seem to be best facilitated by grouping their most important characteristics under three heads—namely, their origin and history and undoubted influence on the political and fiscal policy of the nation.

Under the great financial necessities of the Federal Government by reason of the war the attention of Congress was directed to an income tax as a source of revenue as early as the summer of 1861; and in that and the following year laws establishing such a tax were enacted. Their provisions were, however, so complicated, and the methods authorized by them so inquisitorial, that the Commissioner of Internal Revenue reported in 1863 that they deprived the tax “of all claims to public favour.” The revenue returns under such circumstances were very moderate: \$2,741,858 in 1863, and \$20,294,000 in 1864. In this latter year a more comprehensive and effective law was enacted, which was followed by better results, the collections to the credit of the income tax rising from \$32,050,000 in 1865 to \$72,982,000 in 1866, and \$66,014,000 in 1867. But as the necessity for very large revenues on the part of the Government ceased with the termination of the war, and the spirit of patriotism engendered by the war on the part of the people abated, the collections fell off very rapidly. Thus, between 1866 and 1867 the total receipts on account of the income tax, without any change in the law, declined from \$72,982,156 to \$66,014,000; and in 1872, with an exemption of \$2,000, only 72,949 persons in the United States, out of a population of over 39,000,000, admitted under oath that they were in receipt of any income liable to taxation in excess of the

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they have reason to believe that I am a liar. They have also a right to demand from me upon oath the particular circumstances of my private situation. In obedience to the law, I am ready to attend upon this degrading occasion so novel to an Englishman, and give them every explanation which they may be pleased to require.

I am, sir, your humble servant,

“JOHN HORNE TOOKE.”



exemption. Those only who were officially and intimately connected at this time with the Internal Revenue Department of the United States Treasury can form any adequate idea of the amount of perjury and fraud that characterized and pervaded the country, during the years 1867 to 1872, as the outcome of the then existing system of internal revenue. And American ingenuity was never more strikingly illustrated—not even by the exhibits of the patent office—than it was at that time in devising and successfully carrying out methods for evading the taxes on incomes and distilled spirits.

One curious feature of Federal experience with this tax, the tolerance of which would now be regarded as incompatible with any just and efficient administration of it, was, that the returns made under it were thrown open to the public; and one commissioner of internal revenue instructed his officials to have them published in the pages of local papers, “in order,” as he said, “that the amplest opportunity may be given for the detection of any fraudulent returns that may have been made.” This idea did not find much favour with the public, who, in fact, during the later years of the tax, were inclined to regard with great equanimity all successful attempts to evade it.

The income tax ceased to form a part of the internal revenue system of the United States after the year 1872. It was, however, made a part of the tax system of several of the States, and the following record (hitherto generally overlooked by the public) of the recent administrative experience of one State ought to be especially worthy of the attention of those who advocate the readoption of this form of taxation by the Federal Government.

No State in the Union has a more illiberal, all-pervading system of taxation than Massachusetts, and in no State is the administration of tax laws more stringent or arbitrary. What Massachusetts fails to accomplish in the assessment and collection of taxes would, therefore, seem to be of little use for any of the other States or the Federal Government to attempt with any anticipation of success. This Massachusetts system finds its fittest exemplification in the city of Boston; and the officials who constitute its department of municipal taxation never indulge, as the taxpayers well know, in much sentiment in

the discharge of their duties. The acknowledged representative of this board for many years never hesitated to say that he recognised but one principle, and that was, that in matters of taxation the taxpayer had no rights which the State was bound to respect; and, as chairman of a State commission which some years ago made a report to the Legislature, and with the Declaration of Independence confronting him with its assertion that it is a self-evident truth that "all men are endowed by their Creator with certain inalienable rights," he also gravely asserted that "the individual person [in Massachusetts] has no inalienable rights except that to his own righteousness."

One of the specialties of municipal taxation in Boston, under the supervision of its Board of Assessors, is an income tax, and its methods of administration are substantially as follows: Taxpayers are required to make a return annually, and in detail, of all their property which the law makes subject to taxation (and that embraces almost everything in Massachusetts except their proprietary interests in graveyards); and in blanks officially furnished for such purpose there is a special space for a return of every individual's income. If no return is made, then the Board of Assessors meet in secret in an upper room of the City Hall, known as the "Dooming Chamber," and arbitrarily determine the amount of income for which each delinquent shall be assessed; and from such determination there is practically no appeal. The amount thus assessed for income to the individual is then "lumped in" with the aggregate of his other taxes; and if a dissatisfied taxpayer wishes to discover what amount has been decided upon as his income, the assessors will not afford him any information. Under such circumstances it might naturally be supposed that the administration of an income tax in the city of Boston would be an unqualified success. But what are the facts?

*First*, comparatively few of the taxpayers of Boston make any returns to the assessors of their income. *Second*, the returns that are made are not open to the inspection of the public. There is no law in Massachusetts covering this point, but one of the Boston assessors is reported as saying that if the returns were open to public inspection none would be made, as the chief objection of

taxpayers to filing returns was the fear that their incomes from business or professions might be known. The statutes of Massachusetts, however, provide that the returns of each individual's property shall be made by the assessors of every city and town in the State to the secretary of the Commonwealth; but inquiry shows that the Boston assessors make no such returns. *Third*, although the amount annually collected from an income tax in the city of Boston is very considerable—\$840,000 in 1892—it probably represents, according to the Boston Advertiser, “only about one fourth of what is due in the city from incomes.” In the face of such an exhibit the question is pertinent, What measure of success do the present advocates of a Federal income tax expect will follow an attempt to expand the Boston system of its administration over an area of country extending from Florida to Alaska?

One would naturally think that the lesson of experience which the Government and the people of the United States have already had, would restrain further experimenting with this subject until the next war or the arrival of the millennium.

That a free government can not efficiently collect a tax which its people regard as unjust without a resort to despotic methods that public sentiment in turn will not tolerate is illustrated in this further tax experience of Massachusetts:

The State laws require that citizens who are shareholders in corporations organized in other States shall be taxed in Massachusetts on the market value of shares so held; and such owners are required to make a return under oath of the amount of such property in their possession.\* Yet a petition recently presented to the Legislature of the State by representative members of boards of trade and chambers of commerce recites that the law in question “is ineffective and therefore ridiculous, as is proved by the fact that although the market value of shares of foreign corporations held by citizens of Boston alone is believed to be over \$600,000,000, the amount taxed by the

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\* The tax laws of New Hampshire and Vermont are drafted especially with a view to compelling the disclosure of income.

assessors of Boston was then only estimated at \$45,000,000; and nearly all of this that is known is taxed to the unfortunate people whose estates are in trust." \*

In the United States the income tax, as enacted in 1863, exempted \$600 annual income for each person, together with whatever was paid annually for rent and repairs of residence. Five per cent per annum was then levied on all incomes above \$600 and not in excess of \$5,000; seven per cent on all incomes in excess of \$10,000. In the income tax of the United States as it existed at one period there was, therefore, recognised the principle not only of exempting incomes below a certain amount from all taxation, which amount, in order to keep up the appearances of equity, was allowed to be equally deducted from all larger incomes; and in addition a further feature, not generally recognised in other existing systems of income taxations, of "graduating" the assessment by increasing the rate or the percentage on the larger incomes; a system most exceptional and peculiar, but which on first presentation seemed to find favour as an ingenious and equitable

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\* If any one thinks that this extraordinary tax experience is limited to one section of the country, he would do well to acquaint himself with the recent results of the State of Ohio in attempting to tax money on deposit. Ohio has even a more efficient and minute scheme of taxing all classes of property than Massachusetts. Not only is every citizen bound under oath to make a complete return of his property, but the law, in addition, empowers each county in the State to contract with certain so-called "tax inquisitors" for the payment of twenty per cent of all taxes collected through their agency on previously assessed property. How successful this scheme has been in collecting taxes on money on deposit is shown by the fact, revealed in a recent report of the State Board of Tax Commissioners, that while the amount of money on deposit in the State, national, and private banks of Ohio in 1892, and subject to State taxation, was at least \$190,000,000, the amount actually returned for taxation in the whole State during that same year was but a little over \$32,000,000. There is a remark that has almost assumed the character of a proverb, that a text suitable to and illustrative of every situation may be found in the Bible. The text that is most applicable, and which ought to be full of instruction to every congressional advocate of the enactment of an income tax by the Federal Government in time of peace, will be found in the sixth chapter of the First Epistle of Paul to the Corinthians, where the apostle, as if he had the existing situation in view, remarks, "All things are lawful unto me, but all things are not expedient."

method of equalizing the burdens of the State between the rich and the poor.

The present is therefore an advantageous opportunity for asking whether any income tax which discriminates in any degree is likely, as is often claimed, to constitute the one perfect form of taxation of the future. And at the outset attention is asked to the following considerations, to which popular attention is not always intelligently given:

A Federal income-tax system necessarily involves multiple taxation on one and the same income, person, and property. For example, in the United States a citizen of any one State would be liable, in the *first* instance, to the Federal tax on his income; *second*, to a State tax on the same income; *third*, to a tax on the property or business producing the income, in virtue of its location and consequent territorial jurisdiction of the State. In some States—Massachusetts, for example—the State, in virtue of its jurisdiction over a person, taxes him also for property beyond its territorial jurisdiction and subject to taxation in the State where it is an actuality. Doubtless such duplications in a greater or less degree will be inevitable in the case of all Federal taxation. But where there are so many sources available to the national Government for obtaining revenue, it would seem to be impolitic for it to encroach on those methods which are particularly applicable to the States—as income taxes, taxes on legacies and successions,\* which are governed and protected by State laws, and franchises, which are almost exclusively granted by the States and rarely by the Federal Government. Certainly there would seem to be no warrant in either justice or expediency in unnecessarily favouring such a system of multiple taxation; thereby increasing the real or fancied grievances of the people in respect to all taxation, and creating, by reason of a sense of injustice, additional temptations on the part of the taxpayer to fraud and evasion.

Again, all modern systems of income taxation have recognised the principle of discriminating in favour of persons in receipt of comparatively small incomes, and

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\* See *post*, Chapter XXVIII.

have provided as a fundamental feature of their policy, that all incomes below a certain rate should be exempted from assessment. Such exemptions, except in the case of the United States, have always and until within a recent period been of a comparatively small amount. In Great Britain it is £160 (\$800) per annum. No difference is made in England in levying the income tax, though often proposed and advocated, on account of the source whence the income is derived. Whether the income is earned by the exertions of its possessor, or arises from property, so that the recipient is sure of it without the slightest exertion at all on his part, the same proportion has always been deducted from it. In the administration of its income-tax system England has abandoned the idea of assessing an income derived from multiple sources as a whole to one taxpayer, and in place divides an assessable income into schedules according to its source; and, in fact, has given to such a system the popular designation of "the stoppage at source plan." Thus at present the sources of income in Great Britain are classified as pertaining to one or more of five schedules—designated as A, B, C, D, and E. For example, the profits or income derived from agricultural industry are classified as under schedule A, and those from manufactures, mines, gas works, and water supplies under schedule D, and the like; and it is only in schedules A and D that the income receiver must make a return of agricultural, mercantile, or manufacturing gains or profits.\*

The result of a progressive income tax instituted a few years since in Vaud and other prosperous and populous Swiss cantons is reported to have already verified

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\* A recent number of the London Times reports the following additional illustration of the ingenuity of the people of every country subject to an income tax to evade the payment of the same:

"There is an argument in favour of the separation of the incomes of married couples for the purpose of income tax which has not yet been advanced. It is the immoral state of the law as it stands at present. John and Mary, each possessing incomes of less than £500, but in the aggregate exceeding that sum, agree to live together as a certain 'advanced' couple did who made themselves notorious only a short time since. They are both entitled to relief under the act. Should they, however, legalize their union, neither

the predictions and prophecies of the European economists. The project has been often discussed in England, France, and other countries, but the tendency of economic discussion has always been generally adverse to it, on the ground that such forms of taxation would discourage the permanent investment of capital, and encourage capitalists to transfer their capital and business to other and foreign localities. Vaud, however, in particular, determined to ignore the economists and impose the tax, and the inevitable disturbance of capital is reported to have taken place. One of the chief capitalists of Lausanne, a Swiss tanner named Mercier, employing several hundred workmen, is moving his business from Lausanne to the other side of the lake (Geneva) at Evian. Evian is in French territory,

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is entitled to any rebate, and they are actually taxed for rendering themselves respectable members of society. And this is in moral England."

In the earliest of Mr. Gladstone's budget speeches, that of 1853, he distinctly refused, while admitting that a great deal might be said in favour of taxing incomes at different rates, according as they proceed from property or from skill, to break up the income tax into classes, and to make a difference in the assessment according to the source from which the income was derived. Mr. Gladstone's argument, in this instance, applied to the difficulty of discriminating between the various degrees of the durability of incomes; but his definite refusal to "vary the rate of the tax according to the source of the income"—on the ground, to use his own words, that "I think that I should be guilty of a high political offence if I attempted it"—may suffice as a sufficient expression of his opinion in favour of a proportional system. In a recent number of the *Nineteenth Century* Mr. Gladstone referred to his budget of 1853, in which he continued his income tax, and to his proposal, in 1874, to carry on the national finance without its assistance. He refers to the preparations made, through successive reductions of the tax, for its ultimate abolition, and observes that "in 1874, for the first time since 1845, the opportunity arrived. The nation had its opportunity and took its choice. It may have been wise or unwise; but it was made by competent authority. The result is told in our present expenditure."

In general discussions on the income tax, especially those which have characterized the financial debates in the British Parliament, the proposition has been often advanced that it is a hardship that incomes arising from the exertions of a man's brain should be charged at as high a rate as those resulting from invested capital; and during the present Parliament (1896) a motion was made by a leading member that the financial committee of the House may have permission to amend the assessment in such cases. In a debate which followed (instituted by Sir John Lubbock) it was



and there is no progressive income tax there. "Up to this time," wrote M. Mercier, in a letter published by the Lausanne papers, "I have paid over 20,000 francs a year in state and town taxes. The new law would raise that figure to 80,000 francs or more. I owe it to my family to withdraw out of reach of what I can not consider otherwise than downright spoliation."

A recent economist, commenting on this transaction, thus curtly developed the whole subject: "The fact is that a progressive income tax will not work under modern conditions. The modern movability of capital has made all the difference. The Florentine democracy taxed capital to

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stated that "while there was an immense difference, no doubt, between the two classes of incomes, if extreme cases were considered, they nevertheless passed the one into the other by imperceptible gradations. Nor had any satisfactory treatment of investments ever been suggested. Let them take one class—the securities of foreign nations. Some were excellent, others, unfortunately, as investors knew to their cost, were almost valueless. An arrangement, however, proposed by Sir Robert Peel in 1858 gave a substantial relief to those who had precarious incomes. They made their returns on an average of the income during the three preceding years, and, if the amount fell short, a rebate was given on the difference. He urged that they might make an effort this year to induce Parliament and the Government to revert to the old system, which, it was evident, would be only fair and a great boon to all those whose income depended upon their own exertions, whether in law, medicine, or commerce." He contended that the rising and successful man was assessed on less than his income, while the man whose income was falling was made to pay on more than his income. The Chancellor of the Exchequer said in reply that "his friend had urged the desirability of returning to the system that existed prior to the passing of the act of 1865. He seemed to have overlooked the fact that the alteration effected by that act, which he now wished to overthrow, was introduced at the express instance of Mr. Hubbard, who was a strong advocate for lightening the burden of the income tax wherever practicable. Taking the average of a man's income for three years was a plan specially devised to meet the difficulty in the way of appeal that would be experienced by business and professional men. He was quite willing to allow that system to continue, as he believed that it was, on the whole, fair to both parties. The proposal of his friend, however, while adhering to the form of making a return upon the average, did not in fact carry out that principle at all, for the first year was only to be struck out where the fourth year showed a loss. Surely, therefore, if the revenue was to collect only on the small receipts, the principle of average ceased at once. For this reason he did not feel justified in accepting the amendment."



death, no doubt, but in the middle ages once a Florentine always a Florentine. Cosmopolitanism was not invented, and a man hesitated long before seeking his fortune among strangers when 'stranger' and 'enemy' were almost equivalent terms. All that is now changed. A progressive income tax in England, unless very moderate and managed with the utmost circumspection—and even then the experiment would be too dangerous to try—would certainly result in an enormous transference of English capital to Belgium and Germany. If the idea of progressive taxation is feasible at all, it is only feasible in the death duties, and even there the difficulties are formidable enough." \*

In Germany, the income exemption being very small, nearly the whole population of the country, male and female, are made subject to the provisions of the income tax. According to M. Soetbeer, the German economist,

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\* The rate of tax progression in Canton Vaud is much less heavy in the case of real than in respect to other descriptions of property. The amount of taxation is fixed yearly. It was for the first year, after the law was passed, at the rate of one hundred and twenty per mille on the lowest class of personal property, with exemptions on movable property, tools, kitchen utensils, clothes, and household furniture. A much more intricate arrangement exists for income derived from personal exertions. Sixteen pounds a year is allowed to be deducted from the income, and exempted from taxation, for the head of the family himself, his wife, for each of his children or descendants who are minors, and for each person for whose maintenance the head of the family is legally liable. Thus, a man with a wife and twelve children, possessing an income of five thousand six hundred francs (two hundred and twenty-four pounds) a year, would be entirely exempt from taxation, as also would be a man with a wife and three children and an income from labour of two thousand francs (eighty pounds) a year. It can not be supposed that a low taxation of this character, with all the risks involved of causing capital to emigrate, and of preventing strangers, who, after an interval, are also to be subject to the same tax, from settling in the canton, or from remaining there, with all the differences of class-feeling which it evoked, could have become law without calling forth some strong and almost passionate expressions. It has to be remembered that besides the taxation for the administration of the canton proper, those levied for the expenses, which we include under the head of local government, such as roads, watercourses, education, free to all classes in Switzerland, and carried out with much vigour and cost, are likewise levied according to the same system. We may form some idea of the weight of the burden thus imposed.

the total income of the classes in Germany who pay income taxes is \$2,190,000,000, and of this amount fifty-one per cent is owned by people whose incomes range between two hundred and twenty-five dollars and four hundred and twelve dollars. And the New York Nation surmises that a similar state of things would be found if an analysis of all classes of income-tax payers were to be made in England.

In Austria a new law has been reported by a special Government commission since a previous statement (see this chapter, page 522). At present all persons of Austrian nationality whose annual income exceeds six hundred florins will be liable to a personal income tax which will be levied on a sliding scale. The scale is graduated so that five per cent will be levied on small incomes and as much as six per cent on large ones. Employees whose total incomes are less than six hundred florins per annum are exempt. In addition to the income tax, persons of either sex trading or carrying on business on their own account are subject to an additional impost. The new law is intended to supersede the existing system by the introduction of a general tax on private trading and industrial establishments of all descriptions, a tax on all joint-stock companies and other enterprises legally bound to publish annual balance sheets, a tax on incomes derived from invested capital, and a personal income tax based on a progressive sliding scale.

In France, the republic, although groaning under an almost overwhelming burden of debt, has recently refused, by a vote in its Chamber of Deputies of 267 to 236, to reconstruct its income-tax system, with a view of increasing the revenue derived from it; and subsequently, by a majority of 289, refused to reconsider its position, although the organic law framed for France in 1875 gives the national legislature unlimited power over taxation, direct as well as indirect. During the popular discussion that preceded this legislative action, it is interesting to note that a progressive income tax was not properly regarded as more oppressive than many other forms of taxation, and as a matter of French experience a heavy income tax—about four per cent—is now levied on French bonds and shares, in fact, on every dividend of a French com-

pany, while no income tax is levied on French Government stocks or foreign bonds; and this apparently unfair treatment is accounted for because the revenue derived from French companies can be easily ascertained and the companies made responsible for it, while such a result would be impossible in the case of foreign bonds or foreign stocks and shares, and hence the difficulty has arisen of how to compel the taxpayer to pay: as, if the declaration was left to him, it was not unreasonable to suppose he would not declare it, or only declare it in part; while if left for ascertainment by French officials, it was feared that the income tax in France would become a political weapon, which would be freely used against the legislators in power.

M. Paul Leroy-Beaulieu, a distinguished French economist, has recently advanced and advocated the view that a state in instituting an income tax for the sole purpose of obtaining revenue, ought not to grade the tax at all, or lay a higher rate on large incomes than on smaller ones; or, in other words, that it is better to tax all incomes that are taxed at all at one uniform rate; and the reason for this is that the large incomes form so small a percentage of the total that the increased rate adds no great amount to the revenue, while it greatly increases the difficulty of assessing large incomes at their true value.

In support of this view he submits in general terms the following results of his careful examinations in Prussia, Saxony, and England: In Prussia, where incomes above one hundred dollars were taxed, for the year selected by M. Leroy-Beaulieu, about one fourth of the people were entirely exempt. Of the rest, thirty-five thirty-sixths paid on incomes of from one hundred dollars to seven hundred and fifty dollars. Only one person out of forty-three had more than seven hundred and fifty dollars income. Only a little over four per cent of the total income of the country belonged to persons having an income of from \$4,000 to \$20,000, and only 1.7 per cent to those having over \$20,000 income.

In Saxony one fifth of the total incomes belonged to persons having less than one hundred and fifteen dollars yearly. The incomes of those having less than four hundred and seventy-five dollars each aggregated about two thirds of the total income. The great incomes, exceeding

\$25,000 to the person, belonged to seventy-three individuals, and comprised less than one and a half per cent of the total.

In England incomes under one hundred and sixty pounds, or eight hundred dollars, are not taxed. In the year selected by M. Leroy-Beaulieu 381,000 persons paid income taxes of a total of \$750,000,000. Of the contributors 342,000, or about nine tenths, paid on incomes of less than \$3,000, but it is noticeable that they were taxed on not much more than a third of the total amount. Thus nearly two thirds of the taxable income belonged to 39,000 persons. One fifth of the total incomes assessed belonged to 1,222 persons, with an income of over \$50,000 each.

It will be seen that there is a striking difference in the results shown by M. Leroy-Beaulieu's figures in Germany and England. Much of this difference is due to the nature of the laws, by which all small incomes in England are free from taxation, but a part of it is to be attributed to the larger fortunes in England.

ITALY.—There is no income tax in Italy in the sense in which that term is used in England and the United States, but there is a so-called professional income tax which was by an old law fixed at seventeen per cent on half the estimated income, and which has been somewhat increased by a new law in which there are variations made according to the sources of income. While Italy is, in fact, potentially one of the richest countries in Europe, and in ancient times was so regarded, its name to a certain extent has come to be synonymous with poverty. The explanation of this is that its government is prodigal and dishonest; and in gathering its income the dishonesty of its officials causes its taxation to fall most oppressively on the classes which a wise statesmanship would protect, and leaving the minimum burden on those who are most capable of bearing its maximum.

A new feature of the British fiscal system, which in a certain sense may be regarded as an increase of the exemption under the existing income tax, has recently been sanctioned by Parliament under the name of the "Farm Rating Act," which proposes to mitigate existing agricultural depression by relieving farm lands of a large part of their share of local taxation—i. e., as pointed out in

debate in the House of Commons, by Sir William Harcourt, "by taking £2,000,000 (\$10,000,000) out of the general taxation of the country," inasmuch as, if certain existing sources of revenue supply less, other taxes must supply more. "This will bring up the total governmental contribution for like purposes to £6,000,000 in 1868, and £11,000,000 in 1892." In a debate on this subject before the Royal Statistical Society, it was maintained that an assessment of the English poor rate, to which nearly all other English rates were now mere additions, was originally founded on the principle of ability to pay, and that principle had never been expressly repudiated. But the making of this expenditure a local charge was in itself a negation of the principle of taxation according to ability, and the only question now was whether an attempt should be made to establish in each locality a principle which had been established as regards the nation as a whole. The answer was in the negative.

"Speaking very broadly," wrote Mr. Goschen a quarter of a century ago, "in England fifty years ago land bore two thirds of the taxation on real property, and houses and other property one third; the latter now bears two thirds, while the lands bear one third. In France lands bore over two thirds more than fifty years ago, and bear more than two thirds still. Land, in short, is not as a rule highly rated in England, and where it is highly rated what is wanted is a revised assessment."

WHAT IS EXEMPTION FROM TAXATION?—An exemption is freedom from a burden or service to which others are liable; but an exemption for a public purpose, or a valid consideration, is not an exemption except in name, for the valid and full consideration, or the public purpose promoted, is received in lieu of the tax. Nor is an exemption from taxation a discriminating burden on those who pay an income tax, provided the person or institution benefited by the exemption is a pauper, or a public charitable institution; for then there is consideration for the exemption, and it is justified as a matter of economy, and to prevent an expensive circuitry of action in levying the tax with the sole purpose of giving it back to the intended beneficiary of the Government. The avoidance of this unnecessary circuitry of action is not, moreover, an in-

jury but a gain to those who pay the tax. It can not, however, be seriously claimed that a man having \$100,000 of productive capital, and receiving from it \$4,000 of annual income, is entitled to receive support from the Government as a public pauper.

An income tax which permits of *any exemption whatever* is a graduated income tax, not by the rate of the tax but by the amount of the exemption, because all incomes below an arbitrary line are entirely exempt from the tax. Again, in treating of an income tax it should be always borne in mind that, when a Government taxes the *income of property*, it in reality taxes the property from which the income is derived. In England and on the Continent of Europe land is taxed on its yearly revenue, or income value, and these taxes are always considered as land taxes. Alexander Hamilton, in discussing the taxation of incomes derived directly from property, used this language: "What, in fact, is property but a fiction, without the beneficial use of it? In many instances, indeed, the income is the property itself."—*Hamilton's Works*, vol. iii, p. 523.

As in theory all citizens ought to contribute in proportion to their revenue to the support of the Government under which they have chosen to live and to which they look for protection in respect to their persons and property, the exemption of any from an income tax can only be justified on the assumption of the non-receipt by the citizen of an income beyond what is necessary to defray the expenses of a moderate living. In truth, any exemption under a general income tax is in principle an act of charity on the part of the Government. It is interesting, therefore, to note where the authors or special advocates of the income tax of 1884 proposed to draw the line in respect to charity and as to the amount of property the possession or enjoyment of which, in their opinion, constituted riches.

If the law exempts from taxation income from property to the extent of \$2,000, it in effect exempts property to the capital value of \$50,000 from taxation, for at present *four* per cent is about the average profit of money, land, or other property, over and above all charges and taxes, and at that rate of profit \$2,000 will be the annual income value of \$50,000. If, however, we assume five per

cent as about the present annual average profit on money, land, or other property in the United States, over and above all charges and taxes, then an exemption of \$4,000, the rate fixed upon in the income-tax act of 1884, would represent an accumulation, or business, or profession, of the value of \$80,000. If we take the rate at which the United States can borrow money—namely, three per cent—then an exemption of \$4,000 would represent an accumulation of a citizen, invested in United States securities, of \$133,333 +. And, according to any fair interpretation of the action of the committee which reported in 1894 a \$4,000 exemption, a citizen who is worth less than \$80,000 of ordinary property yielding income, or \$133,000 of property invested in United States bonds, was a legitimate object for national charity; the above sums representing the dividing line in the United States between those who were entitled to be regarded as poor and those who were entitled to be considered rich. Such an assumption finds no precedent in fiscal history, and was an unwarranted favouritism to nine tenths of the well-to-do people of the country, who were abundantly able to pay any just proportion of the taxes which the Government then considered it necessary to impose for its support. Under such circumstances it would be a misnomer to call such an extortion taxation. It was unmasked confiscation and a burlesque on taxation. In the case of the income tax of 1868, when the amount of exemption was \$1,000, experience demonstrated that more than nine tenths of the entire property of the country, and more than ninety-nine hundredths of its property owners, escaped payment from this form of taxation.

Again, an income tax which exempts \$4,000 of income in the United States can not be defended by any rational rule or doctrine, legal or economic, for the property and income exempted would be infinitely greater in the aggregate than the property and the income of the same class made subject to the tax. Under this form of an income tax there could be no equality between taxed-producers and non-taxed-producers, and more especially as the non-taxed-producers will be the most numerous and the greatest producers in quantity as a body.

No man is a freeman whose industry and capital are



subject to exaction, and from which his immediate competitors are entirely exempt. Equality of taxation of all persons and property brought into open competition under like circumstances is necessary to produce equality of condition for all, in all production and in all the enjoyments of life, liberty, and property; and government, whatever name it may assume, is a despotism, and commits acts of flagrant spoliation, if it grants exemption or exacts a greater or less rate of tax from one man than from another man, on account of the one owning or having in his possession more or less of the same class of property which is subject to the tax. If it were proposed to levy a tax of five per cent on annual incomes below \$4,000 in amount, and exempt all incomes above this sum, the unequal and discriminating character of the exemption would be at once apparent; and yet an income tax exempting all incomes below \$1,000 is equally unjust and discriminating. In either case the exemption can not be founded or defended on any sound principles of free constitutional government; and is simply a manifestation of tyrannical power, under whatever form of government it may be enforced. The great republican principle of equality before the law, and constitutional law itself, alike preclude any exemption of income derived from like property.

M. Thiers, in his work on the Rights of Property, thus forcibly condemns confiscation under the name or form of a graduated income tax: "Proportionality," he says, "is a principle, but progression is a hateful despotism. . . . To exact a tenth from one, a fifth from another, and a third from another is pure despotism—it is robbery."

Finally, the principle involved in this question of discriminating income taxation is one that affects the foundation and continued existence of every free government—namely, the equality of all men before the law. Any exemption whatever, under an income tax, be it small or great, except to the absolutely indigent, is purely arbitrary; and the principle once allowed may be carried to any extent. Any exemption of any portion of the same class of property or incomes is an act of charity which every patriotic American citizen ought to reject upon principle and with scorn, except under circumstances of



great want and destitution. Equality and manhood, therefore, demand and require uniformity of burden in whatever is the subject of taxation.

THE INCEPTION OR ORIGIN OF THE INCOME TAX IN THE UNITED STATES.—The subject of taxation in the new Government which it was proposed to establish in place of the colonial system which the Revolution had supplanted, constituted one of the most important and salient points of interest in the convention which framed the Constitution of the United States, and was the cause of much difference of opinion among its members and earnest contention between the States. The great source of weakness of the Confederation was its inability to levy taxes of any kind for the support of its Government. To raise revenue it was obliged to make requisitions upon the States which were respected or disregarded at their pleasure. Great embarrassments followed the consequent inability to obtain the necessary funds to carry on the Government. One of the principal objects of the proposed new Government was to obviate this defect of the Confederacy by conferring authority upon the new Government by which taxes could be directly laid whenever desired. Great difficulty in accomplishing this object was found to exist. The seaboard States were unwilling to give up their right to lay duties upon imports, which were their chief source of revenue. The inland States, on the other hand, were unwilling to make any agreement for the levying of taxes directly upon real and personal property, the smaller States fearing that they would be overborne by unequal burdens forced upon them by the action of the larger States. In this condition of things great embarrassment was felt by the members of the convention. It was feared at times that the effort to form a new Government would fail. But happily a compromise was effected by an agreement that direct taxes should be levied by Congress by *apportioning them among the States according to their representation*. In return for this concession by some of the States, the other States bordering on navigable waters consented to relinquish to the new Government the control of duties, imposts, and excises, and the regulation of commerce, with the condition that the duties, imposts, and excises should be *uniform throughout the United States*; so that, on the one

hand, anything like oppression or undue advantage of any one State over the others would be prevented by the apportionment of the direct taxes among the States according to their representation; and, on the other hand, anything like oppression or hardship in the levying of duties, imposts, and excises would be avoided by the provision that they should be uniform throughout the United States.

The Federal Constitution accordingly upon completion divided the taxes that Congress might impose under it into two classes: those which are *direct* and those which are *indirect*, or, as the letter of the Constitution expresses it, "duties, imposts, and excises." It also provides that the former shall be apportioned, equally with representation in Congress, among the several States of the Union, according to their respective numbers, that "no capitation or direct taxes shall be laid unless in proportion to the census"; and that the latter class of taxes shall be "uniform throughout the United States."

But from the beginning of the Federal Government the determination of the exact legal meaning of the word "direct" as applied in the Constitution to taxation has been one of great difficulty and embarrassment, although the doctrine in England and her colonies, before the adoption of the Constitution, was a favourite one, that "taxation and representation should go together." \*

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\* The framers of the Constitution intended that the apportionment of direct taxes among the States should be in more exact ratio to the population even than it is possible to apportion the representation. For example: Suppose one representative to every ninety thousand inhabitants, a State might have a large fraction left over; but the apportionment of direct taxes was designed to be with mathematical accuracy to the precise number of persons ascertained by the census. After the first apportionment of representatives had been made in the Federal Convention by estimated population, before an actual census, it was held that the estimate of the population of the different States was not sufficiently accurate for the apportionment of a direct tax; and that, consequently, the General Government could not lay a direct tax until a census should have been taken. Elbridge Gerry, of Massachusetts, moved that until a census be taken direct taxation be apportioned to the number of representatives. Mr. Carroll, of Maryland, replied that "*the number of representatives did not admit of a proportion exact enough for a rule of taxation*" (Elliot's Debates, v, 451). Mr. Ellsworth "thought such a rule unjust. There was a great difference between the number of inhabitants, as a rule, in this case,

All historical data explanatory of the constitutional meaning of the term "direct" have been of an indirect character, and so imperfect that the court has heretofore apparently not regarded them as worthy of consideration. But this condition of things no longer exists; for in the brief submitted to, and in the argument made before the United States Supreme Court adverse to the constitutionality of the provisions of the income-tax enactment of August, 1894, by Hon. Clarence A. Seward, a department of national history which no historian or jurist had ever before completely exploited, was so traversed by him that it is difficult to see how any one can acquaint himself

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Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule. A State might have one representative only, that had inhabitants enough for one and a half or more, if fractions could be applied" (*ibid.*, 453). Mr. Gerry's motion was defeated. The convention, after debate, *decided that direct taxes must be apportioned in the States in more exact ratio to the population than the representatives could possibly be apportioned* (Elliot, v, 453).

Many of the leading patriots of the Revolution—Patrick Henry among them—were distrustful of granting this power, even with the restriction placed upon its exercise. Massachusetts accompanied her adoption of the Constitution with a resolution, signed by John Hancock, recommending an amendment of the Constitution which should prohibit Congress from levying a direct tax until they should first have made a requisition on the States (I Elliot, 323). The same amendment, word for word, was recommended by the State of New York and the State of North Carolina, and similar resolutions were adopted by South Carolina, Rhode Island, and Virginia.

In the apportionment of the direct taxes which had been laid by Congress previous to the income tax the ratio to the census was preserved with scrupulous accuracy, and the actual use of the authority up to the time of the imposition of the income tax was in accordance with the understanding of the framers of the Constitution.

Mr. Madison, who was probably the most active participant and member in the convention that framed the Constitution of the United States, in a letter written after the adoption of the Constitution but before the organization of the new Government, and never discovered and its contents made public until 1895, embodies much new information in regard to the intent and purpose of the term "*direct*" taxes as used in the Constitution and in regard to the understanding of the people of the United States concerning that term when they adopted the Constitution. It shows, what is extraordinary, "that the term, in the estimation of the men who used it, did not refer to the kind, or character, or nature of the tax

with its results and doubt that, although the framers of the Constitution and the people they represented might not fully agree as to a full and comprehensive definition of a direct tax, there was apparently a perfect unanimity of opinion among them that an income tax was a typical example of that kind of taxation.

Previous to the adoption of the Constitution there were no Federal taxes, and all precedents for helping to a correct determination of the constitutional meaning of direct taxation must therefore be drawn from the prior experience of the several States.

What was that experience? Recent historical research

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itself, and that the framers of the Constitution never considered the subject of taxation from the philosophical or politico-economic point of view, but were wrestling with the stern necessities of the question, How shall the people of these several States be induced to pay a Federal tax?

"Manifestly, it could be raised by but one of two methods: either *indirectly*, by 'requisitions' on the several States, as under the still existing Confederacy, or by taxes laid *directly* by the Federal Government. Duties and excises were not indirect taxes; they were not under discussion or consideration; they were not in the case at all. *Indirect taxes* were taxes procured indirectly by 'requisitions' on the States; *direct taxes* were taxes laid *directly* by the Federal Government. The framers of the Constitution evidently had never looked at the subject from a politico-economic point of view; they had never given a thought to the philosophy of taxation; the term 'direct taxes,' as they used it, did not refer to the kind or character or nature of the tax, but to the fact that such taxes were no longer to be laid indirectly through 'requisitions' upon the States, but directly upon the taxpayer by the newly constituted taxing power. Indirect taxes would be a thing of the past, of the expiring Confederation; taxes directly laid by the future Government would supply its extraordinary revenue when needed.

"But here State jealousy had entered into the problem which the framers were solving—the difficult problem of taking power from the individual States and transferring it to this new, unknown, and distant central authority. If Congress could lay a tax directly upon the property of the citizens of all the States, might it not be so laid that the citizens of Virginia would have to pay more than the citizens of New York? How should the power so transferred be restrained?

"The convention answered the question by the word population. The new power of direct taxation should be given to Congress, *but the system of quotas*, with which the people of the country were familiar, *should be retained*."—*New York Nation*.

For some further discussion of this question see *ante*, p. 357.

shows that Massachusetts had taxed incomes for more than a hundred years prior to the assembling of the Constitutional Convention; other of the leading States were imposing like taxes at or about 1787, and the receipts therefrom were used to help pay the quotas demanded by the then Government of the Confederation for the maintenance of the Federal Government. The income tax so paid, and all the other internal taxes collected by the States, were known as and called direct taxes and are so called to-day.

The Constitutional Convention empowered Congress to levy any of the authorized forms of taxation on the States; but the levy of direct taxes was guarded by a provision that such taxes should be apportioned to the population. The explanation of this curious anomaly is that the consensus of opinion in the convention was that wealth at that period was so equitably divided among the people of the States that population was the best measure of wealth and consequently of equitable taxation. But what would become of the element of equality if the levy was in the form of indirect taxes—duties, imposts, and excises—which, falling on the consumption of tea, coffee, sugar, spirits, and the like, leave it optional with the citizen in a great degree whether he will pay or not? Hamilton certainly thought that the door had been effectually closed against the possibility of any such evasion, for, when speaking of direct taxes in *The Federalist*, he says: "An actual census or enumeration of the people must furnish the rule; a circumstance which effectually shuts the door to partiality or evasion."

But any doubt on this subject ought no longer to be tolerated, for we now have, almost for the first time, a definition of or distinction between direct and indirect taxes that is founded on sound philosophy and large experience, and can not be refuted—namely, a direct tax has always in it an element of compulsion. The person against whom or on whose property or income a direct tax is levied has no option whether or when he shall pay. There is nothing voluntary about it. On the other hand, an indirect tax, whoever may first advance it, is paid voluntarily, and primarily by the consumer of the taxed article.

But the most important and vital issue involved in

the income tax enacted 1894 (August 18th) was that it designedly provided for discriminating taxation, and this fact may be best demonstrated and brought to popular comprehension in the following manner: In a recent interview (1895) with a leading British parliamentary authority, the conversation turned on the new and unprecedented discriminating rates in the legacy and succession taxes imposed by the present British Parliament, and the opinion of the writer was asked respecting them. He returned, offhand, the answer that he could only discuss them from a British point of view, for, under the Constitution of the United States, such taxes could not be levied by the Federal Government, contemporaneously. And how promptly foreign authorities recognise the truth of this position is shown by the following extract from an editorial in the London Times on the phase of the income statute then before the United States Supreme Court: "Were we," it said, "under the United States Constitution, Sir William Harcourt's budget would have been declared unconstitutional. Populist leaders in America must envy us the freedom of dealing with other people's property, enjoyed in this motherland of liberty." This conversation led to a historical investigation, and the recognition of what seemed to be a fact little or not before noted, that the United States is the only nation that now exists or ever has existed which, through constitutional or other provisions, has, or has had, any limitations on its Government in respect to the general exercise or extent of the power of taxation. If there are any exceptions, they are to be found in the legislative enactments of the French National Assembly of 1789, and possibly in what is now known as the referendum system of Switzerland.

But a government that has no limitations on its power of taxation, that can arbitrarily take in whatever manner, to whatever extent, and at whatever time it pleases, the property of its people or subjects, whether that right exists in theory, as in England, or in actual practice, as in Germany, Austria, and Russia, is a despotism. If this assumption and reasoning may seem to any one extravagant and unwarranted, his attention is respectfully asked to the following expression of opinion on this subject by the United States Supreme Court, as given through Jus-

tice Miller in the celebrated "Loan Association vs. Topeka" case (20 Wallace, 665) :

*"It must be conceded that there are rights in every free government beyond the control of the State. A government which recognised no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unbounded control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many—of the majority, if you choose to call it so—but it is none the less a despotism."*

And yet can there be any doubt that the American people would have abandoned their proud historical position if the Supreme Court had decided in 1895 that the income-tax enactment of 1894 was constitutional?

For such a decision would practically have removed any constitutional limitation on the exercise of the power of taxation by Congress, and in this way: First, by establishing that an income tax is not a direct tax, there can be practically thereafter no direct taxes to which the constitutional mandate of apportionment will apply, for popular sentiment will never sanction the enactment of a general "capitation" or "poll" tax, or a direct tax on land.

Then it certainly could not be unconstitutional to multiply classes for taxation according to wealth and increase the rate up to the point of confiscation. Can any one, furthermore, doubt that the primary object of the enactment proposed in 1894 was not the raising of revenue for the national Treasury, but rather to permit a part of the people of the country to impose discriminating taxes on the people of another part, and then fixing a general exemption at so high a rate that those of the first part, who are entirely able, should not be required to pay anything? If this exemption, in place of \$4,000, had been fixed only to include the average annual wages or earnings of the working masses of the country, is it probable that Congress would have even considered the enactment of the income tax of 1894? Even before the form of the statute of 1894 was reported from the proper committee, speculation was indulged in to the effect that the constituents of certain districts would not have to pay any-



thing in the way of income taxes under it. That the Government also practically conceded that the income-tax enactment of 1894 was pre-eminently class legislation is also evident from the following extract from a statement made in a brief by the Attorney General of the United States pending the consideration of the income-tax question by the United States Supreme Court: \* “Congress,” he said, “has adopted as the *minimum* income for the purpose of taxation the limit of four thousand dollars. This limit may be said to divide the *upper* from the *lower middle class*, financially speaking, in the larger cities, or to divide the *middle class* from the wealthy in the country districts.” †

Attention is next asked to what seems to be by far the most serious point in this whole matter, and which has not as yet attracted public attention in any marked degree. The American people have been trying an experiment as a nation which has never before been attempted by any other nation—namely, that of universal suffrage, by which the power to elect legislators and shape the policy of the Government has been put under the control of those who, through no fault of their own, have not enjoyed such educational facilities as will enable them independently to form correct opinions on great constitutional, legal, financial, or economic questions, thereby creating almost endless possibilities for injudicious legislation. How such possibilities were being made actualities in the case of the income-tax statute of 1894 can be made evident to almost any one who makes himself fully acquainted with the cir-

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\* By an enactment of Congress, August 18, 1894, establishing an income tax for the United States, a tax of *two* per cent was imposed on the gains, profits, and incomes of persons derived from any kind of property, including rent and the growth and produce of lands, and profits made upon the sale of land if purchased within two years. Every element that could make real or personal property a source of value to an owner was taxed. An excise duty was also imposed upon income derived from any profession, trade, employment, or avocation. The tax upon persons generally was not upon their entire income, but on the excess over and above the sum of four thousand dollars. All persons having incomes of four thousand dollars or under were exempt.

† Opening argument by William D. Guthrie, in support of the contention that the income-tax law of 1894 was unconstitutional.



cumstances attendant on its inception and almost concurrent legal adjudications and contentions.

The members of the convention that framed the Constitution of the United States had the very questions before them that have already been in issue before the American people, and may at no distant day be again presented for their serious consideration. It was inequalities in methods and facilities for the raising of revenue among the States of the Confederation for the support of the Federal Government that threatened the existence of the Confederation and necessitated the assemblage of the Constitutional Convention. And the members of this convention, taught by experience, incorporated in their work the provisions respecting the exercise of the power of taxation, the meaning and validity of which are now called in question. And in so doing they gave to the people of the United States an instrument of which one great feature, if not its chief feature, and one not recognised as it ought to be, is that it guards the rights of minorities as no other governmental instrument devised by mortal man ever has done. As long as this great feature is preserved intact and the nation adds to it another principle, that every question of doubt concerning it shall be always determined in a way to strengthen it, the perpetuity of the present Government is assured. But if now the Supreme Court invalidates this great feature by nullifying the mandate of the Constitution, and thereby practically removes all limitations on the power of Congress to impose taxes, sanctions discriminating taxation and disregards the rights of minorities, the hour when this Government enters upon the path of decadence will have struck. How puerile it is for any one to favour such a decision and its inevitable results, on the ground that a contrary decision would oblige the Government to repay to the people a large sum of money that it had illegally collected from them! This would, however, have one recommendation—namely, that it would approximately solve the difficult question, How much, in terms of money, is the existing Government worth?

CONCLUSION.—The following extract, incorporated by Mr. Justice Field in his opinion, delivered in concurrence with a majority of his colleagues, and adverse to the con-

stitutionality of the income-tax statute of 1894, which imposed discriminating taxes on the American people, is also pre-eminently worthy of notice in connection with any general history or review of this great subject:

“Here I close. I could not say less in view of questions of such gravity that go down to the very foundation of the Government. If the provisions of the Constitution can be set aside by an act of Congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich—a war constantly growing in intensity and bitterness. ‘If the court sanctions the power of discriminating taxation, and nullifies the uniformity mandate of the Constitution,’ as said by one who has been all his life a student of our institutions, ‘it will mark the hour when the sure decadence of our present Government will commence.’ If the purely arbitrary limitation of four thousand dollars in the present law can be sustained, none having less than that amount of property being assessed or taxed for the support of the Government, the limitation of future Congresses may be fixed at a much larger sum, at five or ten or twenty thousand dollars, parties possessing that amount alone being bound to bear the burdens of government; or the limitation may be designated at such an amount as a board of walking delegates may deem necessary. There is no safety in allowing the limitation to be adjusted except in strict compliance with the mandates of the Constitution which require its taxation to be uniform in operation and, so far as practicable, in proportion to their property, equal upon all citizens. Unless the rule of the Constitution governs, a majority may fix the limitation at such rate as will not include any of their own number.

“Cooley, in his *Treatise on Taxation* (second edition, 215), justly observes that ‘it is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favour. Such favouritism could make no pretence to equality; it would lack the substance of legitimate tax legislation.’

“The income-tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of four thousand dollars and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in one of his papers (The Continentalist): ‘The genius of liberty repudiates everything arbitrary in taxation. It exacts that every man, by a definite and general rule, shall know what proportion of his property the State demands. Whatever liberty we may boast of in theory, it can not exist in fact while [arbitrary] assessments continue.’ The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the Constitution which followed the late civil war had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate. Under wise and constitutional legislation every citizen should contribute his proportion, however small the sum, to the support of the Government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose he will have a greater regard for the Government and more self-respect for himself, feeling that, though he is poor in fact, he is not a pauper of his Government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved, they will ultimately triumph over all reverses of fortune.”

## CHAPTER XXV.

### WHAT SHOULD BE TAXED, AND HOW IT SHOULD BE TAXED.

SOME years since (1873) a citizen of Tennessee, Mr. Enoch Ensley, making no pretence of scholastic learning or private interests, but earnestly desiring the material development of his section of the country (Tennessee), and that it should not be retarded by the adoption of an unsound system of State or municipal taxation, published in the form of a letter addressed to the Governor of the State a little pamphlet entitled *What should be Taxed, and How it should be Taxed*, which set forth certain fundamental propositions in respect to local taxation, and supported them with such homely and clear illustrations as to entitle the essay to a permanent place in economic and legal literature.

Mr. Ensley commences by proposing the following rule or maxim as the basis for a State (Tennessee), city, or county system of taxation:

“NEVER TAX ANYTHING THAT WOULD BE OF VALUE TO YOUR STATE, THAT COULD AND WOULD RUN AWAY, OR THAT COULD AND WOULD COME TO YOU.”

Mr. Ensley then lays down the proposition that property naturally divides itself into *two* classes—*movable* and *immovable*; that the former, as its name implies, can be moved from one place to another as its owner chooses, while the latter is fixed and can not budge an inch, no matter what its owner chooses. “I hold it to be true that immovable property has no value till it is occupied or located upon, or brought to subsist or employ, movable property; and, as a rule, the more it employs or subsists, the more valuable it becomes; and the greater the inducements or attractions it offers movable property, the more it will have to locate upon it”; citing in proof and illus-

tration the fact that the best acre of land in America is worth nothing till man goes upon it with his axe, horse, cow, etc., and puts it in cultivation and brings it to subsist himself, horse, cow, etc.; and from that moment it commences to have a value, by reason of the fact that it employs or subsists the man (who, if he can be called property at all, is certainly movable property) as well as the horse, cow, etc. And if this acre of ground for any cause should become attractive to and employ double the amount of movable property, it will as a general rule become doubly valuable; and so on, if it should become attractive to and employ profitably ten or a hundred or a thousand fold more movable property, it would become in like ratio more valuable, even up to the value of millions of dollars per acre, by reason of the fact that it offers attractions, and has employed upon it profitably five, ten, or fifteen millions of dollars' worth of movable property. Of course, when ground gets beyond a certain value it must be put to other uses than agriculture, and just this process acres of ground have doubtless passed through since the Dutch first landed on Manhattan Island.

There are exceptions to this rule—that immovable property is valuable as it has movable property employed directly on it—for it frequently has a greater value than movable property employed directly on it would warrant. It has a value reflected from the employment of movable property employed on immovable property near by, as in the case of residences in or near cities. For instance, the use of movable property on a Broadway lot gives a great value to the merchant's residence up town, by reason of the fact that it is sufficiently near and convenient for it to be in demand for the transaction of business daily at his store, all of which is attributable to the employment of movable property at the store.

The thrift or profit which immovable property offers to movable property helps to regulate its value. For instance, a man owns two pieces of property alike, say in different towns, rented out to merchants of equal capital; one is enabled to make seven per cent per annum only on his capital, for the reason that he has to pay three per cent tax on his capital, and the other makes ten per cent net, and pays no tax. The property paying ten per cent

will be the most valuable, for it will pay the largest rent, because there will be more applicants for it than for the seven per cent; and the law of supply and demand governing, it must rent for more. It is, however, impossible, as a general thing, for these two merchants to remain of equal capital. The ten-per-cent man will soon have more capital, from his extra thrift; and the seven-per-cent man, seeing his prosperity, is apt to pull up stakes and quit his town, and move to the ten-per-cent town; and other merchants will perhaps do the same thing, until, by competition increasing in the one town by other merchants coming in, and decreasing in the other by their going out, profits may be made the same. This, however, is not apt to make profits the same in a country like ours, for there is generally new trade to be looked up to keep pace with the newcomers. So the result would be that the newcomers would continue to go to the ten-per-cent town from the seven-per-cent town and other places, till the one becomes a large and prosperous city, and the other a dilapidated, languishing town. It will be easy then to say which storehouse is the most valuable.

In this there is little of novelty; but in the homely, clear illustrations which Mr. Ensley employed for impressing his fellow-citizens with the truth of his propositions, novelty is not wanting. Thus, for example, he says:

“I hold that, of all men, the real-estate, or fixed-property man, is most interested in the rule or motto I have adopted. To illustrate, I will say that there is an acre of ground in the city of Memphis, Tennessee, say in front of the Overton Block, that is worth at the rate of two hundred thousand dollars per acre, while the writer has an acre six miles below the city, quite as good naturally, and even better than the Overton Block acre, because it will produce more corn, cotton, pumpkins, peas, potatoes, cabbage, etc., than the Overton acre will, or ever would, and my acre is not worth one hundred dollars per acre. Now why is it that the Overton acre is worth two hundred thousand dollars per acre, and mine not worth one hundred dollars? The reason is that there is employed on the Overton acre, profitably, two, three, four, or five hundred thousand dollars of movable property, while upon mine

there is employed the sixteenth part of a negro, the sixteenth part of a mule, plough, hoe, etc. Now, if you will manage in any way, either by taxation or otherwise, to drive from this Overton acre the two, three, four, or five hundred thousand dollars, and affect the Overton acre so that this capital, or any part of it, can not be employed on it with a profit, it will not be worth more than my acre—in fact, not so much, for there is nothing so valueless as ground covered with houses, when there is no demand for said houses. And, further, if you do anything to make the two, three, four, or five hundred thousand dollars pay less profit, you will damage the ground, or lessen its value, more rapidly than you will decrease the profits—not in the same ratio, but more rapidly. Suppose, for instance, the profit has been ten per cent net on the capital employed, and the property is paying a rental on three hundred thousand dollars; if you reduce the profits permanently, in any way, to five per cent net, the property would not pay a rental on one hundred and fifty thousand; in fact, it would hardly pay any rent at all, for five per cent would be too small to induce a business at all in this country.”

“Movable property always seeks and locates on immovable property where it thrives and multiplies most rapidly. A spot of ground, a city, a county, a State, or even a nation, that offers the greatest thrift, will be sought and located upon by the greatest quantity of it, and the greater the quantity the more value and thrift will the land have. Any tax levied upon it lessens its thrift, and consequently is in violation of the correct principle; though it may not be enough to perceptibly affect it, yet it will have some effect. Though it may not drive any away, yet it will, to some extent, keep other movable property from coming.”

“It is said that it was the last feather that broke the camel’s back, while the first had as much to do with it as the last. An oppressive tax, such as exists in some parts of our State, drives off a good deal of movable property, and absolutely forbids any more coming to such parts, unless it comes relying upon dodging or evading the law, which large capital never does. Men of small amounts of money, goods, etc., such as one can hide, may

the income tax enacted 1894 (August 18th) was that it designedly provided for discriminating taxation, and this fact may be best demonstrated and brought to popular comprehension in the following manner: In a recent interview (1895) with a leading British parliamentary authority, the conversation turned on the new and unprecedented discriminating rates in the legacy and succession taxes imposed by the present British Parliament, and the opinion of the writer was asked respecting them. He returned, offhand, the answer that he could only discuss them from a British point of view, for, under the Constitution of the United States, such taxes could not be levied by the Federal Government, contemporaneously. And how promptly foreign authorities recognise the truth of this position is shown by the following extract from an editorial in the London Times on the phase of the income statute then before the United States Supreme Court: "Were we," it said, "under the United States Constitution, Sir William Harcourt's budget would have been declared unconstitutional. Populist leaders in America must envy us the freedom of dealing with other people's property, enjoyed in this motherland of liberty." This conversation led to a historical investigation, and the recognition of what seemed to be a fact little or not before noted, that the United States is the only nation that now exists or ever has existed which, through constitutional or other provisions, has, or has had, any limitations on its Government in respect to the general exercise or extent of the power of taxation. If there are any exceptions, they are to be found in the legislative enactments of the French National Assembly of 1789, and possibly in what is now known as the referendum system of Switzerland.

But a government that has no limitations on its power of taxation, that can arbitrarily take in whatever manner, to whatever extent, and at whatever time it pleases, the property of its people or subjects, whether that right exists in theory, as in England, or in actual practice, as in Germany, Austria, and Russia, is a despotism. If this assumption and reasoning may seem to any one extravagant and unwarranted, his attention is respectfully asked to the following expression of opinion on this subject by the United States Supreme Court, as given through Jus-



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Then it certainly could not be unconstitutional to multiply classes for taxation according to wealth and increase the rate up to the point of confiscation. Can any one, furthermore, doubt that the primary object of the enactment proposed in 1894 was not the raising of revenue for the national Treasury, but rather to permit a part of the people of the country to impose discriminating taxes on the people of another part, and then fixing a general exemption at so high a rate that those of the first part, who are entirely able, should not be required to pay anything? If this exemption, in place of \$4,000, had been fixed only to include the average annual wages or earnings of the working masses of the country, is it probable that Congress would have even considered the enactment of the income tax of 1894? Even before the form of the statute of 1894 was reported from the proper committee, speculation was indulged in to the effect that the constituents of certain districts would not have to pay any-

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But a government that has no limitations on its power of taxation, that can arbitrarily take in whatever manner, to whatever extent, and at whatever time it pleases, the property of its people or subjects, whether that right exists in theory, as in England, or in actual practice, as in Germany, Austria, and Russia, is a despotism. If this assumption and reasoning may seem to any one extravagant and unwarranted, his attention is respectfully asked to the following expression of opinion on this subject by the United States Supreme Court, as given through Jus-

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*"It must be conceded that there are rights in every free government beyond the control of the State. A government which recognised no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unbounded control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many—of the majority, if you choose to call it so—but it is none the less a despotism."*

And yet can there be any doubt that the American people would have abandoned their proud historical position if the Supreme Court had decided in 1895 that the income-tax enactment of 1894 was constitutional?

For such a decision would practically have removed any constitutional limitation on the exercise of the power of taxation by Congress, and in this way: First, by establishing that an income tax is not a direct tax, there can be practically thereafter no direct taxes to which the constitutional mandate of apportionment will apply, for popular sentiment will never sanction the enactment of a general "capitation" or "poll" tax, or a direct tax on land.

Then it certainly could not be unconstitutional to multiply classes for taxation according to wealth and increase the rate up to the point of confiscation. Can any one, furthermore, doubt that the primary object of the enactment proposed in 1894 was not the raising of revenue for the national Treasury, but rather to permit a part of the people of the country to impose discriminating taxes on the people of another part, and then fixing a general exemption at so high a rate that those of the first part, who are entirely able, should not be required to pay anything? If this exemption, in place of \$4,000, had been fixed only to include the average annual wages or earnings of the working masses of the country, is it probable that Congress would have even considered the enactment of the income tax of 1894? Even before the form of the statute of 1894 was reported from the proper committee, speculation was indulged in to the effect that the constituents of certain districts would not have to pay any-

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blacksmith to shoe them; and then the retail drygoods houses, mantuamakers, milliners, grocery-men, butchers, vegetable market men, and, in short, every kind of retail establishment throughout the city, thereby giving vigour, life, and thrift to all; and thus it would go on until, before you would be aware of it, you would have a city of hundreds of thousands of people, and be worth and pay a rental on hundreds of millions of dollars. Of course, no general trade would pay one hundred per cent per annum, but I have adopted this rate to illustrate the principle.

“The system of non-taxation of certain kinds of movable property, which I am advocating as the correct system, while it is the best to be adopted in every State, yet it will not make a rich State out of every State, nor will it build up every town to be a large city, by any means. Thus, for instance, its application to a naturally poor State could not induce movable property sufficient to go there to make it a very rich State; still, if there is any way possible to develop such a State, this is the one.

“I think I have shown beyond question that it is not in harmony with the interests of any one in any State to tax money, trade, manufactures, etc., and that, of all others, the owners of fixed or immovable property should demand that the present system be changed—that they should say: Don’t adopt any system that has a tendency to drive movable property from me; but, on the contrary, adopt a system that will attract it—for we are worth nothing without it, and the movable-property man may go elsewhere and do quite as well.”



## CHAPTER XXVI.

### THE LAW OF THE DIFFUSION OF TAXES.

No attempt ought to be made to construct or formulate an economically correct, equitable, and efficient system of taxation which does not give full consideration to the method or extent to which taxes diffuse themselves after their first incidence. On this subject there is a great difference of opinion, which has occasioned, for more than a century, a vast and never-ending discussion on the part of economic writers. All of this discussion, however, has resulted in no generally accepted practical conclusions; has been truthfully characterized by a leading French economist (M. Parieu) as marked in no small part by the "simplicity of ignorance," and from a somewhat complete review (recently published \*) of the conflicting theories advanced by participants one rises with a feeling of weariness and disgust.

The majority of economists, legislators, and the public generally incline to the opinion that taxes mainly rest where they are laid, and are not shifted or diffused to an extent that requires any recognition in the enactment of statutes for their assessment. Thus, a tax commission of Massachusetts, as the result of their investigations, arrived at the conclusion that "the tendency of taxes is that they must be paid by the actual persons on whom they are levied." But a little thought must, however, make clear that unless the advancement of taxes and their final and actual payment are one and the same thing, the Massachusetts statement is simply an evasion of the main question at issue, and that its authors had no intelligent conception of it. A better proposition, and one that may

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\* On the Shifting and Incidence of Taxation, by Prof. Edwin R. Seligman, 1892.

even be regarded as an economic axiom, is that, regarding taxation as a synonym for a force, as it really is, it follows the natural and invariable law of all forces, and distributes itself in the line of least resistance. It is also valuable as indicating the line of inquiry most likely to lead to exact and practical conclusions. But beyond this it lacks value, inasmuch as it fails to embody any suggestions as to the best method of making the involved principle a basis for any general system for correct taxation; inasmuch as "the line of least resistance" is not a positive factor, and may be and often is so arranged as to make levies on the part of the State under the name of taxation subservient to private rather than public interests. Under such circumstances the question naturally arises, What is the best method for determining, at least, the approximate truth in respect to this vexed subject? A manifestly correct answer would be: *first*, to avoid at the outset all theoretic assumptions as a basis for reasoning; *second*, to obtain and marshal all the facts and conditions incident to the inquiry or deducible from experience; *third*, recognise the interdependence of all such facts and conclusions; *fourth*, be practical in the highest degree in accepting things as they are, and dealing with them as they are found; and on such a basis attention is next asked to the following line of investigations.

It is essential at the outset to correct reasoning that the distinction between *taxation* and *spoliation* be kept clearly in view. That only is entitled to be called a tax law which levies uniformly upon all the subjects of taxation; which does not of itself exempt any part of the property of *the same* class which is selected to bear the primary burden of taxation, or by its imperfections to any extent permits such exemptions. All levies or assessments made by the State on the persons, property, or business of its citizens that do not conform to such conditions are *spoliations*, concerning which nothing but irregularity can be predicated; nothing positive concerning their diffusion can be asserted; and the most complete collection of experiences in respect to them can not be properly dignified as "a science." And it may be properly claimed that from a non-recognition or lack of appreciation of the broad distinction between taxation and spoliation, the disagree-

ment among economists respecting the diffusion of taxes has mainly originated.

With this premise, let us next consider what facts and experiences are pertinent to this subject, and available to assist in reaching sound conclusions; proceeding very carefully and cautiously in so doing, inasmuch as territory is to be entered upon that has not been generally or thoroughly explored.

The facts and experiences of first importance in such inquiry are that the examination of the tax rolls in any State, city, or municipality of the United States will show that surprisingly small numbers of persons primarily pay or advance any kind of taxes. It is not probable that more than one tenth of the adult population or about one twentieth of the entire population of the United States ever come in contact officially with a tax assessor or tax collector. It is also estimated that less than two per cent of the total population of the United States advance the entire customs and internal revenue of the Federal Government.

In the investigations made in 1871, by a commission created by the Legislature of the State of New York to revise its laws relative to the assessment and collection of taxes, it was found that in the city of New York, out of a population of over one million in the above year, only 8,920 names, or less than one per cent of this great multitude of people, had "any household furniture, money, goods, chattels, debts due from solvent debtors, whether on account of contract, note, bond, or mortgage, or any public stocks, or stocks in moneyed corporations, or in general any personal property of which the assessors could take cognizance for taxation"; and further, that not over *four* per cent, or, say, forty thousand persons out of the million, were subject to any primary tax in respect to the ownership of any property whatever, real or personal; while only a few years subsequent, or in 1875, the regular tax commissioners of New York estimated that of the property defined and described by the laws of the State as personal property, an amount approximating two thousand million dollars in value was held in New York city alone. Later investigations show that this state of things has continued. Thus, in 1895, out of a population of

about two million, it was estimated that only seventy-nine thousand, or not over four per cent of the inhabitants of the city, were subject to primary taxation, and that one half the whole amount collected in that year was paid by less than a thousand persons. In the city of Boston, where the tax laws are executed in the most arbitrary manner, the ratio of population directly assessed is somewhat greater, but aside from the poll tax, which is a per capita and not a property tax, only 7.27 per cent of residents paid a property tax in 1895 out of a population of 494,205. In one of the smaller cities of Massachusetts, where persons and property are capable of more thorough supervision than larger numbers and areas—namely, the city of Springfield, with a population of about fifty thousand—the report of its tax officials shows that for the year 1894-'95 the number of persons and corporations assessed on property (mainly real estate) was 7,745, or one for every 6.4 of its citizens, while 10,560 other citizens were assessed for a poll tax of two dollars only. Of the total amount of taxes assessed—namely, \$735,948—the above number, 10,560, paid only \$21,120; and this is the experience generally throughout the United States, as it will be in every country under a free popular government, where arbitrary inquisitions and arrests of persons and seizures of property are not allowed, and where a soldier does not practically stand behind every tax assessor and collector.

The time (1871) when the personal investigations above referred to were made was when the masses of the city of New York were moved with indignation at the misuse and private appropriation by a few officials (Tweed and his associates) of the municipal revenues raised by taxation, under cover of instituting public improvements, and which finally led to their prosecution, imprisonment, or self-imposed exile; and the questions which naturally suggested themselves were: If only some forty thousand of the million in New York city paid the taxes, what interest had the other nine hundred and sixty thousand who never saw the face of a tax assessor or collector in opposing corruption? What, in an honest administration of the city government and in a reduction of taxes? Must it not be for the interest of the many that the expenditures

of the State shall always be as large as possible? Must they not be benefited by exorbitant taxes on the owners of property, and a distribution of the money collected, even if stolen by corruptionists, but spent by them lavishly on enterprises that will furnish new opportunities for employment or amusement for the masses? Clearly, so far as any personal experience growing out of any *direct* assessment and levy was concerned, ninety-six per cent of the population of the city had no more cause of personal grievance by reason of the unlawful taking of money from the city treasury than they would have had at the taking of an equivalent amount from the municipal treasuries of London, Paris, or any other city.

The answer to these questions is to be found in the fact, as John Adams once remarked, that "if the Creator has given man a reason that is fallible, he has also impressed upon him an instinct that is sure." And this instinct teaches the masses everywhere, though they have never read a book on political economy, or heard any one discourse learnedly on the principles of taxation, that if taxes are increased, either by a lawful or unlawful expenditure of public money, they can not in any possible way avoid paying some portion of its increase; or, in other words, that increased taxes mean increased cost of living, through increased rents, increased price of fuel, clothing, and provisions; and, possibly, diminished opportunity to labour, through such increased cost of the products of labour as would limit and restrict markets or consumption. In short, that taxes inevitably fall upon them through the increased price of all they consume, even if they pay nothing to the tax collector directly. A large proportion of the masses of the city of New York in 1871-'72, who paid no taxes directly, accordingly and spontaneously joined hands with the comparatively few of their fellow-citizens who did pay in resisting extravagance and corruption.\*

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\* The assertion would not be warranted that the masses of New York were wholly unanimous in condemning Tweed, for a portion of them were undoubtedly well content with the situation. He had curried favour with the very poor and ignorant by distributing coal and flour, and making ostentatious presents of money; and these "charities" are remembered to this day in the

We are thus led up and forced to the recognition of two propositions, or rather principles, in respect to taxation that can not be invalidated. The *first* is, that it is not necessary that a tax assessor or collector should personally assess and levy upon every citizen of a State or community in order that all should be compelled to contribute of his property for the support of such State or community; *second*, that there is an inexorable law by which every man must bear a portion of the burden of public expenditures, even though the official assessors take no direct cognizance of him whatever.

The following incident may here be cited as instructive: In one of the recent official hearings before a legislative committee of one of the States, a strenuous advocate of the popular doctrine that there was and could be no such thing as equality in taxation except by rigidly taxing everybody directly for all his property, of every description, both real and personal, and that to not tax immediately and directly was, in at least a great degree, to exempt from taxation, expressed himself as entirely opposed to any system of restricting assessments to a comparatively few things, on the ground that it would be a recognition in the United States of a system which in Great Britain had ground down the masses into poverty. He, however, obtained some new light on the subject of non-diffusion by being reminded that if the masses of England had been grievously oppressed by taxation, it had been under a system of many years' standing, which never in any way brings the tax collector in direct contact with nineteen twentieths of the entire population; the customs taxes of Great Britain being practically levied on only four articles—spirits, tea, coffee, and tobacco; and the inland revenue also on practically four—spirits, beer, legacies and successions, and stamps (on deeds, insurance policies, bills of exchange, receipts, drafts, etc.). Generalizing, then, on the basis of so broad a fact, how illogical and unscientific was the assumption that whatever persons, property, or business are not taxed directly are exempt from

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poorer parts of New York city, and Tweed is esteemed by many as the victim of injustice, and a man who suffered because he was the friend of the people.

taxation!—and yet the practical exemplification of such a system, in the case of England, was a most efficient instrumentality for grinding the masses of her people down to poverty.

On the other hand, to generalize from the experience of an individual or a class in place of that of a nation or community, let us take the case of a person who passes all the year *in transitu*—moving backward and forward, for example, in a boat on the line of the Erie Canal, or between the head waters of the Mississippi and its mouth; a citizen of no one State, a resident in no one town, and buying all that he eats, drinks, and wears wherever he can buy cheapest. Does this man escape taxation because he has no permanent *situs* (residence as a citizen), and is unknown by any assessor? If he does, then his occupation is more profitable to the extent of the taxes he avoids than is that of the individual who, following analogous occupations, resides permanently in one location, and pays taxes regularly; or else some notable, easily discernible cause, as undue competition to obtain situations, will account for his exemption.

Let us next consider how practical experience definitely indicates the line of least resistance, in conformity with which those contributions of property or service which the State requires its citizens to make for its support, and are worthy of designation as taxes, diffuse themselves. Let us take first that form of indirect taxation which is known as customs, or taxes on imports, one from which the Federal Government of the United States has derived in recent years more than half of its revenue, and Great Britain more than one fourth of its total receipts from all forms of imperial taxes. That all such taxes as a rule diffuse themselves, and ultimately fall upon and are paid by final consumers, is capable of demonstration by a great variety of evidence. Every remission of customs duties on the imports into any country of its staple articles of consumption is followed by a reduction of cost approximately equal to such reduction, and a consequent increase in consumption. On the other hand, nothing is better settled than that an increase in customs taxes on imported articles as a rule increases prices and tends to reduce consumption. When Great Britain, in 1863, reduced her taxes

(duties) on her imports of tea from 1s. 5d. to 1s. per pound, her importation of tea increased from 114,000,000 pounds in 1862 to 139,000,000 in 1866, and her per capita consumption during the same period from 2.70 pounds to 3.42 pounds; and again, when the duty was further reduced in 1865 from 1s. to 6d. per pound, the annual importations increased from 139,000,000 in 1866 to 209,000,000 in 1881, and the per capita consumption from 3.42 pounds to 4.58.

When by the act of October, 1890, the tax was removed from the imports of crude sugars into the United States, the price of the same went down almost immediately to an equal extent in all American markets; while the consumption of sugar in the country increased from an average of about fifty-four pounds per capita in 1890 to more than sixty-seven pounds in 1892. A like result has attended a similar experience in respect to this in other countries, and especially in Great Britain. Thus, the aggregate consumption of sugar by the British people in 1844 was returned at 237,143 tons. A reduction of taxes on its importation in 1864 increased its domestic use to 528,919 tons; a reduction of fifty per cent on existing rates in 1870 made it 695,029 tons; another reduction of fifty per cent in 1873 carried up consumption to 779,000 tons; and when, in 1874, all taxes on the imports of sugar were abolished, the annual domestic consumption increased in little more than a year's period to 930,000 tons. On the other hand, when by the tariff act of 1890 an additional tax of half a cent per pound was imposed on the import of tin plate into the United States, tin plate went up to an equal extent in price all over the country; and so also on pearl buttons, linen goods, and other articles of foreign production on the importations of which the tariff taxes were largely increased. By the tariff act of 1890, also, eggs, which could formerly be imported into the United States free of duty, were made subject to a tax of five cents per dozen. Since then the price of eggs imported from Canada into districts of the United States within the same sphere of territorial competition has been increased to the American consumers to almost exactly the extent of the import tax to which they are subjected. Thus, when the price of eggs was ten and a half cents



per dozen in Toronto, they were sixteen cents in Buffalo and sixteen and a half to seventeen cents in New York. Such a result would be unaccountable if the Canadian farmers paid the duty on eggs sent by them to the United States.

It is interesting to here ask attention to the opinions entertained and expressed by those whose situation and experience have qualified them to speak with authority: "The duty constitutes the price of the whole mass of the article in the market. It is substantially paid on the article of domestic manufacture, as well as that of foreign production" (John Quincy Adams). "I said it, and I stand by it, that as a general rule the duties paid on imports operate as a tax upon the consumer" (John Sherman). Mr. Blaine, in his *Twenty Years in Congress*, says, speaking of the increase of duties on imports by the tariff act of July 14, 1862, that it "shut out still more conclusively all competition from foreign fabrics. The increased cost was charged to the consumer." Mr. McKinley, in 1890, in a report introducing a bill for revision of the tariff of the United States, in the direction of increased rates of duties on imports, said it was not the intent of the bill "to further cut down prices," that the people were "already suffering from low prices," and would not be satisfied "with legislation which will result in lower prices." In an elaborate opinion given by the New York Court of Appeals in 1851 (see vol. iv, *New York Reports*), in which there was no suspicion of any issue of free trade or protection, the courts, in carefully considering the relative powers of the Legislature and the judiciary in respect to taxation, assumed the proposition that "*all duties on imported goods are taxes on the class of consumers*" to be in the nature of a self-evident truth or economic axiom.

Henry Clay, in a celebrated speech in the United States House of Representatives in 1833, in advocacy of a protective tariff policy, candidly admitted that "in general it may be taken as a rule that the duty upon an article forms a portion of its price." But he subsequently qualified such admission by claiming that it does not follow that any consequent enhancement of its price is a tax on consumers, inasmuch as "directly or indirectly, in one form or another, all consumers of protected articles, en-

hanced in price," will get an equivalent. But this may be equally affirmed of all necessary and equitable taxation, and does not in any way antagonize the theory that the final incidence of the class of taxes under consideration falls on consumption.

But, notwithstanding these conclusions and the incontrovertible evidence by which they are supported, not a few persons occupying places of great legislative influence, and no small part of the general public, hold to the view that taxes on imports are really in the nature of premiums paid by foreigners for the privilege of selling their goods in the markets of the importing country, and do not fall on its people who consume them. That means that if the foreigner has a yard of cloth, or other commodity, which he sells at home for one dollar, and the United States imposes a tariff of fifty cents on it, he will then sell it for export to America at fifty cents. There is no instance mentioned in history where this has ever been done, but history unfortunately is rarely taken into account by the public in the discussion of these questions. In this connection the following historical incident is interesting and instructive: In 1782 an attempt by the Congress of the Confederation of the several American States to provide a system of revenue to defray the general expenses of the Confederation by duties on imports, which then was not permissible, was blocked by the refusal of the State of Rhode Island to concur in it, the Legislature of that State unanimously rejecting the measure for three reasons—one of which was that it would bear hardest on the few commercial States, particularly Rhode Island, which in virtue of their relations with foreign commerce monopolize imports, and lightest on the agricultural States, that directly imported little or nothing. Congress appointed Alexander Hamilton to draft a reply to Rhode Island, and in his answer he relied mainly on what he regarded as an incontrovertible fact, that duties on imports would not prove a charge on an importing State, but on the final consumers of imports, wherever they may be located.

If the theory and assumption are correct that the foreigner pays the protective taxes which a country levies on its imports, and that they do not fall upon or are not paid

by its people who consume them, then it must follow that to the extent that a country taxes its imports it lives at the expense of foreign nations; and that, as Great Britain is the country with which the United States has the largest foreign trade, it must pay the largest share of the customs taxes of the United States, or a good share of its annual revenue from all sources. Attention is further asked to the exact practical application of this theory. Thus, the United States in 1895 imported \$36,438,196 worth of woollen manufactures, on which it assessed and collected duties (taxes) to the amount of \$20,698,264, or 56.80 per cent of the value of such imports. Certainly this was a pretty heavy tax on foreign nations in respect to the sales of only one class of these commodities; but it represented but a tithe of what the tariff taxes of the United States, if paid by foreigners, cost them. Thus they had to sell their woollens to the people of the latter country at less than half their value in order to compensate for the 56.8-per-cent tax. But a nation engaged in foreign trade can not as a rule have two prices for the product of its industries; or one price for what it sells at home and another and different price for what it sells to foreigners. So the fifty-six per cent deducted from the cost of the woollens sold by foreigners to the United States necessarily had to be deducted not only from so much of their product consumed at home, but also from what they sent for sale to all foreign countries. A further practical application of this theory is worthy of consideration. As Great Britain imposes no protective duties or taxes on its imports, it evidently can not collect anything from other nations by the system of taxation under consideration. On the other hand, the aggregate value of its exports sent to foreign nations during the year 1892 was \$1,135,000,000, and if these several nations taxed this value at the average rate which the United States imposed in 1894 on all its dutiable imports—namely, fifty per cent—Great Britain obviously had to pay some \$557,000,000 in that year for the support of foreign governments; and while this has been the experience of Great Britain for more than forty years of this century, she has as a nation been increasing in wealth during this whole period.

Some of the recent official experiences of the Govern-

ment of the United States that are pertinent to the topic under consideration are sufficiently curious to make them worthy of an economic record. In a speech introducing a bill into the United States House of Representatives, which subsequently resulted in the tariff act of 1890, the then chairman of the Committee of Ways and Means laid down the following proposition: "The Government ought not to buy abroad what it can buy at home. Nor should it be exempted from the laws it imposes upon its citizens."

This would seem to warrant the characterization of a discovery that the United States had some reliable and important source of revenue independent of taxation,\* and that, by compelling the application of a part of this income to the payment of taxes to itself, the Government is placed upon an equality with the citizens. A legitimate criticism on this proposition is that the idea that all the income of the Treasury is derived from the people, and that to transfer portions of this income from one official recipient to another can have hardly any other result than an additional cost of bookkeeping, seems never to have entered the mind of the speaker.

Again, the United States tariff act of 1883 contained in its free list a provision for the admittance of "articles imported for the use of the United States, provided that the price of the same did not include the duty" imposed on such importations. Under the tariff act of 1890 this provision was stricken out of the statute, with the result that when the Government imported any articles for its own use which were subject to duties (as, for example, materials to be used in the National Bureau of Printing and Engraving), it was obliged, in virtue of its non-exemption from the laws which it imposed on its own citizens, to pay such duties itself. But as the Government has no authority to expend money for any purpose without the authority of Congress, the latter body accordingly authorized the Federal Treasury to appropriate money from its tax receipts and make payments with the same to the cus-

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\* Of the net ordinary receipts of the Federal Government (\$385,819,000) in 1893, only about \$12,000,000 was derived from sources that could not be regarded as taxes, and were mainly receipts from the sales and surveys of public and Indian lands (\$4,120,000) and of other Government property.

tomhouse, which the customhouse was to immediately pay back into the Treasury. Just what process was gone through with to effect such a result the public was not informed, but probably the collector of customs drew his warrant on the Treasury, had the amount credited to his account, and then recredited to the Treasury. But, be this as it may, it is clear that the Government, under the conditions above stated, paid the tax on its imports; that the tax may be regarded in the light of a penalty on the Government for importing articles for its own use; and that the action of Congress in authorizing the Treasury to appropriate money for the payment of such taxes was a recognition or admission by that body that a tax upon imports neither puts anything *in* nor takes anything *from* the pocket of the foreigner. Does it not, moreover, invest with a degree of comicality a law enacted by the Congress of the United States for the purpose of taxing foreign importers, which necessitated the enactment by it of another law appropriating money to enable the United States to pay customs taxes every time on everything that it may import for its own uses? \* Finally, if the foreigner and

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\* In 1897 the merchant tailors of the United States, who ought to know something about the incidence of a custom tax on imported clothing, united in a petition to Congress asking that Americans returning from Europe be permitted to introduce only two suits of foreign-made clothes free of duty; and in support of their request they comment as follows on a ruling of the Treasury in respect to this matter: "Under this ruling it was possible to enter free of duty vast quantities of foreign-made garments which had never been actually in use, and which were so imported solely because there exists a relative difference of at least fifty per cent in values between the cost of made-up garments in the United States and Europe, thus saving to the purchaser of garments abroad one half of their actual value upon arrival within the United States duty free." But if the foreigner who made and sold the goods in question was liable to pay the duty on dutiable clothing, and attended to his duty, there would be no profit to the returning tourist in importing clothing free of duty. It is further evident also that American tailors agree in opinion with Alexander Hamilton that the consumers of imported articles pay the customs taxes.

The records of the commercial relations between the United States and Canada are exceedingly instructive on this matter. They all show that for the products which the Canadian sends to the United States, and on which somebody pays the duty, he receives exactly the same price as for those products which he sends to England, on which nobody pays any duty. This experience is

not our citizens pays our customs taxes on imports, what is the object of placing by specific statutes any article on the free list? Why not let him continue to pay millions of taxes for us, as, for example, on sugar?

Attention is next asked to an analysis of the incidence of taxation, what is mainly direct, on processes and products, and on the machinery by which one is effected and the other distributed. At the outset the following propositions in the nature of economic axioms are submitted,

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exactly the same as that of the farmers of the Northwestern States of the Federal Union, who usually get the same price for their wheat furnished to a Minnesota flour mill, or for shipment to free-trade England, as to countries like France and Germany, where heavy duties are assessed upon its import. The term "usually" is employed, for producers in the United States and Canada alike do not always get as large a price for the articles they export as for the same articles they sell to their fellow-countrymen. Again, if it be true, as the advocates of extreme protection assert, that the foreign exporter and not the consumer pays the duties on goods sent by him for sale in this country, how does it happen that it is not true concerning the farm produce and live stock exported from Canada? And why should American farmers be exempt from this rule in sending their grain to Europe? Has anybody ever known of England buying American products any cheaper in New York than France or Germany, and is it not also true that the French or German or Italian consumer usually pays at least the amount of the duty levied by his Government more for American products than his English competitor has, whose imports are subjected to no duty? During the period from 1854 to 1866 there was, under the reciprocity treaty, practically free trade between Canada and the United States in live stock, wool, barley, rye, peas, oats, and other farm products, while subsequent to 1866, when the reciprocity treaty had been repealed, duties were imposed on all these articles on their import from Canada into the United States. During the first period Canadian horses, for example, sold under free trade for shipment to the United States at from sixty-five to eighty-five dollars each, while during the years next subsequent to 1866 the value of the Canadian horses imported into the United States was returned at from ninety-two to one hundred and four dollars each; thus showing that the United States tariff did not force the Canadian horse breeders to lower their prices in order to compensate American purchasers for the duties exacted. And as regards the other products mentioned, the official data show that in no case did the imposition of duties under the United States tariff reduce the prices paid by American purchasers to the Canadian farmers for their products. These are very commonplace, very familiar, and very convincing facts which ought to silence all this talk about the foreign exporter or anybody else but the consumer paying the duty; but it is not at all probable that they will.

which it is believed will serve as stepping stones to the attainment of broad generalizations.

Thus, property is solely produced to supply human wants and desires; and taxes form an important part of the cost of all production, distribution, and consumption, and represent the labour performed in guarding and protecting property at the expense of the State, in all the processes of development and transformation. The State is thus an active and important partner in all production. Without its assistance and protection, production would be impeded or wholly arrested. The soldier or policeman guards, while the citizen performs his labour in safety. As a partner in all the forms of production and business, the State must pay its expenses—i. e., its agents, for their services; and its only means of paying are through its receipts from taxation. Taxes, then, are clearly items of expense in all business, the same as rent, fuel, cost of material, light, labour, waste, insurance, clerical service, advertising, expressage, freight, and the like, and on business principles they find their place on the pages of profit and loss; and, like all other expenses which enter into the cost of production, must finally be sustained by those who gratify their wants or desires by consumption. Production is only a means, and consumption is the end, and the consumer must pay in the end all the expenses of production. Every dealer in domestic or imported merchandise keeps on hand, at all times, upon his shelves, a stock of different and accumulated taxes—customs, internal revenue, State, school, and municipal—with his goods; and when we buy and carry away an article from any store or shop, we buy and carry away with it the accompanying and inherential taxes.

Any primary taxpayer, who does not ultimately consume the thing taxed, and who does not include the tax in the price of the taxed property or its products, must literally throw away his money and must soon become bankrupt and disappear as a competitor; and accordingly the tax advancer will add the tax in his prices if he understands simple addition. How rapidly bankruptcy would befall dealers in imported goods, wares, and merchandise in the United States who did not strictly observe this rule will be realized when one remembers that the average tax



imposed by its Government (in 1896) on all dutiable imports is in excess of fifty per cent.

When Dr. Franklin was asked by a committee of the English House of Commons, prior to the American Revolution, if the province of Pennsylvania did not practically relieve farmers and other landowners from taxation, and at the same time impose a heavy tax on merchants, to the injury of British trade, he answered that "if such special tax was imposed, the merchants were experts with their pens, and added the tax to the price of their goods, and thus made the farmers and all landowners pay their part of the tax as consumers."

Taxes uniformly levied on all the subjects of taxation, and which are not so excessive as to become a prohibition on the use of the thing taxed, become, therefore, a part of the cost of all production, distribution, and consumption, and diffuse and equate themselves by natural laws in the same manner and in the same minute degree as all other elements that constitute the expenses of production. We produce to consume and consume to produce, and the cost of consumption, including taxes, enters into the cost of production, and the cost of production, including taxes, enters into the cost of consumption, and thus taxes levied uniformly on things of the same class, by the laws of competition, supply, and demand, and the all-pervading mediums of labour, will be distributed, percussed, and re-percussed to a remote degree, until they finally fall upon every person, not in proportion to his consumption of a given article, but in the proportion his consumption bears to the aggregate consumption of the taxed community.

A great capitalist, like Mr. Astor, bears no greater burden of taxation (and can not be made to bear more by any laws that can be properly termed tax laws) than the proportion which his aggregate individual consumption bears to the aggregate individual consumption of all others in his circuit of immediate competition; and as to his other taxes, he is a mere tax collector, or conduit, conducting taxes from his tenants or borrowers to the State or city treasury. A whisky distiller is a tax conduit, or tax collector, and sells more taxes than the original cost of whisky, as finds proof and illustration in the fact that the United States imposes a tax of one



dollar and ten cents per gallon on proof whisky which its manufacturer would be very glad to sell free of tax for an average of thirteen cents per gallon. The tax, furthermore, is required to be laid before the whisky can be removed from the distillery or bonded warehouse and allowed to become an article of merchandise. Tobacco in like manner can not go into consumption till the tax is paid. In Great Britain, where all tobacco consumed is imported, for every 3*d.* paid by the consumer, 2.5*d.* represents customs duties or taxes. In Russia it is estimated that the Government annually requires of its peasant producers one third the market value of their entire crop of cereals in payment of their taxes, and fixes the time of collecting the same in the autumn, when the peasant sells sufficient of his grain (mainly for exportation), and with the purchase money meets the demands of the tax collector. Can it be doubted that the sums thus extorted enter into and form an essential part of the cost of the entire crop or product of the land? It is, therefore, immaterial where the process of manufacture takes place; the citizens of a State pay in proportion to the quantity which they consume. The traveller who stops at one of the great city hotels can not avoid reimbursing the owner for the tax he primarily pays on the property, and the owner, in respect to the taxation of his hotel property, is but a great effective real-estate and diffused tax collector. Again, the farmer charges taxes in the price of his products; the labourer, in his wages; the clergyman, in his salary; the lender, in the interest he receives; the lawyer, in his fees; and the manufacturer, in his goods.

The American Bible Society is always in part loaded with the whisky and tobacco taxes paid by the printers, paper-makers, and bookbinders, or by the producers of articles consumed by these mechanics, and reflected and embodied in their wages and the products of their labour according to the degree of absence of competition from fellow-mechanics who abstain from the use of these and other taxed articles.

These conclusions respecting the diffusion of taxes may be said to be universally accepted by economists so far as they relate to the results of production before they reach the hands of the final consumers; but they are not

accepted by many, as Mr. Henry George has recently expressed it, in respect to taxes on special profits or advantages on things of which the supply is strictly limited, or of wealth in the hands of final consumers, or in the course of distribution by gift, and finally in respect to taxes on land. But a little examination would seem to show that all these exceptions are of the kind that are said to prove the rule. *Special profits* and advantages in this age of quick diffusion of knowledge and intense competition are exceedingly ephemeral, and are mainly confined to results which the State with a view of encouraging removes for a limited time from the natural laws of competition by granting patents, copyrights, and franchises. Of things which are strictly limited in respect to supply, what and where are they? Only a very few can be specified: ivory, Peruvian guano, whalebone, ambergris, and the pelts of the fur seal. Of wealth in the process of transmission, or in the hands of final consumers, it is not *tangible* wealth unless it is *tangible* property, which conforms under any correct system of taxation to the principles of taxation; and if any one advocates the taxation of the right to receive property which has already been taxed, he in effect advocates a double exaction of one and the same thing. If it be asked, Will an income tax on a person retired from business be diffused? the answer, beyond question, must be in the affirmative, if the tax is uniform on all persons and on all amounts, and is absolutely collected in minute sums. Would any one pay the same price for a railroad bond which is subject to an income tax as he would for it if it was free from tax? If one's land is taxed, either in the form of rent or income, will not the tenant have the burden primarily thrown upon him? And, finally, will not the consumer of the tenant's goods pay through or by reason of such consumption?

Respecting the incidence of the tax on mortgages, it does not make any difference how mortgages are taxed—no earthly power can make the lender pay it. If the borrower would not agree to pay the tax, the lender would not loan him money, and whenever possible loans would be foreclosed and payment insisted upon if the borrower should refuse to pay the tax.

Let us next subject to analysis the incidence of the

so-called taxation of land. Considered *per se* (or in itself), land, in common with unappropriated air and water, has no value; and it can not in any strict sense be affirmed that we tax land; and when such affirmation is made, its only legitimate and justifiable meaning is that we tax the value of land; which value is due entirely to the amount of personal property (in the sense of embodied labour) expended upon it, and the pressure or demand of such property or labour to use, possess, and occupy it.

Vattel, in his Law of Nations, enunciates as a self-evident and irrefutable proposition that "Nature has not herself established property, and in particular with regard to lands. She only approves this introduction for the advantage of the human race."

One of the most striking examples of evidence in illustration and proof of this proposition is to be found in an incident, which has heretofore escaped attention, which occurred during a debate in the Senate of the United States in 1890 on a bill for revision of duties on imports, in respect to the article borax (borate of soda). Formerly the world's supply of this mineral substance, which enters largely into industrial processes and medicine, was limited, and mainly derived from certain hot springs in Tuscany, Italy; but within a comparatively recent period it has been found that it exists in such abundance in certain of the desert regions of California, Nevada, and Arizona, that it can be gathered with the minimum of labour from the very surface of the ground. Were a single acre of similar desert to be found in any section of a country enjoying the most ordinary privileges in respect to transportation and water supply, it would be a source of wealth to its proprietor. But under existing circumstances, although thousands and thousands of acres of this land can be bought with certain title from its owner—the Federal Government—for two dollars and twenty-five cents an acre, no one wants it at any price; and the prospective demand for it has not yet been sufficient to warrant the Government in instituting even a survey as a preliminary to effecting a sale. In the Senate debate above alluded to it was proposed to increase the duty on imported borax, with the expectation that a consequent increase in its domestic price would afford sufficient profit to induce such construc-

tion of roads and such a supply of water and labour on the borax tracts of the deserts as to enable them to become property.\*

In the oases of the deserts of North Africa and Egypt the value of a tract of land depends very little upon its size or location, but almost exclusively upon the number of the date-bearing palms, the result of labour, growing upon it, and the quality of their fruit. John Bright on one occasion stated that if the land of Ireland were stripped of the improvements made upon it by the labour of the occupier, the face of the country would be "as bare and naked as an American prairie."

An exact parallel to this state of things is afforded in the case of lands of no value reclaimed from the sea and made valuable, as has been often done in England, Holland, and other countries, by embodying labour upon them in the shape of restraining embankments and the transportation and use of filling material. Again, the value of springs or running streams of water is generally limited and of little account. But when, through direct labour, or the results of labour, the water is collected in reservoirs and made the instrumentality of imparting power to machinery, or conducted through conduits to centres of population which otherwise could not obtain it, it becomes extremely valuable, and capable of being sold in large or small quantities. Another similar illustration is to be found in the case of atmospheric air, which in its natural and ordinary state has no marketable value, but when compressed by labour embodied in the form of machinery and made capable of transmitting force, it at once becomes endowed with value and can be sold at a high price.

An opinion entertained and strongly advocated by not a few economic writers and teachers of repute (more especially in Europe, but not in the United States)† is, that

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\* "Senator Paddock: I should like to ask the Senator from Nevada if, in the region of country where borax is found, by reason of finding it the land in the particular State or Territory is appreciated in value on account of its existence.

"Senator Stewart: Not at all.

"Senator Paddock: The value then given to it is all in labour."  
—*Congressional Record*, July, 1890.

† "In America," writes Professor Seligman, "the few writers of prominence on the subject of taxation were, until recently, al-

taxes on land do not diffuse themselves, but fall wholly on the landowner, and that there is no way in which he can throw it off and cause any considerable part of them to be paid by anybody else. The concrete argument in support of this opinion has been thus stated: "When land is taxed, the owner can not, as a general rule, escape the tax, for the reason that, to get rid of the tax, the price of the land or of the rent must be raised the full amount of the tax, and the only way in which this can be done is by reducing the supply or quantity offered in market, or else by increasing the demand. The supply of land can not be reduced, and the demand being created by capital and population, both of which are beyond the control of the landowner, he can do nothing to raise the price of land, and hence can not get rid of the tax. It may be stated, then, as a general rule, that a tax on land, or on any commodity the supply of which is limited absolutely, must be paid by the owner. It is possible to suggest cases in which, through combination of owners and the necessities of consumers, a demand may be created strong enough to raise the price to the full amount of such tax, but it is doubted if such cases ever really occur." \*

The source of the contention on this important economic and social question, and the difficulty in the way of the attainment of harmonious conclusions, is due to a non-recognition of the fact that land is taxed under two conditions, and can not be taxed otherwise. Thus, if a person holds land for his exclusive use or enjoyment, and consumes all of its product, a tax on such land, which has been characterized by some economists as its "pure rent," will not diffuse itself, because it is a tax on personal en-

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most all followers of Thiers," the French economist and statesman, who claimed to have invented the term "diffusion" of taxes.

\* "Our conclusion is, that under actual conditions in America to-day the landowner may virtually be declared to pay in the last instance the taxes that are imposed on his land, and that at all events it is absolutely erroneous to assume any general shifting to the consumer. In so far as our land tax is a part of a general property tax, it can not possibly be shifted; in so far as it is more or less an exclusive tax, it is even then apt to remain where it is first put—on the landowner."—*Seligman: Incidence of Taxation*, p. 99.

joyment or final consumption. The same is the case when a portion of a river or lake or its shore is rented for fishing for the purposes of sport. A like result will also follow, in a greater or less degree, from the inability or unwillingness of tenants, as has been often the case in Ireland, to pay rent sufficient to reimburse the landowner for interest on his investment of capital and cost of repairs. But if one employs land as an instrumentality for acquiring gain through its uses, the taxation of land must include the taxation of its uses—its contents, all that rests upon it, all that is produced, sold, expended, manufactured, or transported on it—and all such taxes will diffuse themselves. On the other hand, if the taxation of land under such circumstances and conditions does not diffuse itself, then the taking is simply a process of confiscation, which if continued will ultimately rob the owner of his property, and is not governed by any principle.

It is indeed difficult to see how a theory so wholly inapplicable to fact and experience as that of the nondiffusion of taxes on land—which makes property in land an exception to the rule acknowledged to be applicable to all other property—could originate and be strenuously maintained to the extent even of stigmatizing any opposite view “as so very superficial as scarcely to deserve a refutation.”\* No little of confusion and controversy on this subject has arisen from the assumption that land specifically, and the rent of land, constitute two distinct and legitimate subjects for taxation, when the fact is just the contrary. The rent of land is in the nature of an income to its owner; and it is an economic axiom that when a government taxes the income of property it in reality taxes the property itself. In England and on the continent of Europe land is generally taxed on its yearly income or income value, and these taxes are always considered as land taxes. Alexander Hamilton, in discussing the taxation of incomes derived directly from property, used this language: “What, in fact, is property but a fiction, without the beneficial use of it? In many instances, indeed, the income is the property itself.” The United States Supreme

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\* Seligman. *Shifting and Incidence of Taxation.*

Court, in its recent decision of the income tax (1895), also practically indorsed this conclusion. To levy taxes on the rent of land and also upon the land itself is, therefore, double taxation on one and the same property, which in common with all other unequal and unjust taxes can not be diffused; and for this reason should be regarded as in the nature of exactions or confiscation, concerning the incidence of which nothing can be safely predicated. In short, this whole discussion, and the unwarranted assumption involved in it and largely accepted, is an illustration of what may be regarded as a maxim, that the greatest errors in political economy have arisen from overlooking the most obvious facts or deductions from experience.

With a purpose of further elucidating this problem, attention is asked first to its consideration from an "abstract," and next from a practical standpoint of view. Let us endeavour to clearly understand the common meaning of the word "*rent*." It is derived from the Latin *reddita*, "things given back or paid," and in plain English is a word for price or hire. It may be the hire of anything. It is the price we pay for the right of exclusive use over something which is not our own. Thus we speak of the rent of land, of buildings and apartments, of a fishery, of boats, of water, of an opera box, of a piano, sewing machines, furniture, vehicles, and the like. In Scotland at the present time farmers hire cows to dairymen, who pay an agreed-upon price by the year or for a term of years for each cow, and reimburse themselves for such payment and make a profit on the transaction by the sale of the products of the animal. This hire is called a rent, and is clearly the same in kind as the rent of land. We do not apply the word "hire" to the employment of men, because we have a separate word—"wages"—for that particular case of hire. Neither do we apply the word "rent" in English to the hire of money, because we have another separate word—"interest"—which has come into special use for the price paid for the loan or hire of money. But in the French language the word *rent* is habitually and specially used to signify the price of the hire money, and that of "*rentes*" to investments of money paying interest; the French national debt being always spoken of as "*les*



*rentes*"; while the men who live on the lending of money, or capital in any form, are called "*rentiers*."

The question next naturally arises, Why is it necessary to set up any special theory at all about the disposition of the price which we pay for the hire of land, any more than about the price we pay for the hire of a house, of furniture, of a boat, of an opera box, or of a cow? The particular kind of use to which we put each of these various things is no doubt very different from the kind of use to which we put each or all the others. But all of these uses resolve themselves into the desire we have to derive some pleasure or some profit by the possession for a time of the right of exclusive use of something which is not our own, and for which we must pay the price, not of purchase, but of hire.

The explanation of this curious economic phenomenon is to be found in the assumption and positive assertion on the part of not a few distinguished economists that the truly scientific and only correct use of the term "rent" is its application to the "income derived from things of all kinds of which the supply is limited, and can not be increased by man's action." \* As a rule, economists who accept this definition confine its application to the hire of land alone, although it professes to include other things, "of all kinds," to which the same description applies—namely, that they can not be increased in quantity by any human action. There are, however, no such other things specified, and in any literal sense there are no such other things existing, unless water and the atmosphere be intended.

Now, although it is indisputably true that man by his action can not increase the absolute or total quantity of land, any more than of water and air, appertaining to the whole globe on which we live, there is practically no limitation to the degree of value which man's action can impart to land, and which is the only thing for which land is wanted, bought, or sold, and which, as already shown, can be truly made the subject of taxation. The tracts of land on the earth's surface which are of no present marketable value are its deserts, its wildernesses, the sides and summits

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\* Professor Marshall. Principles of Economics, vol. i, p. 142.



of its mountains, and its continually frozen zones, where no results of labor are embodied in or reflected upon it; while, on the other hand, its tracts of greatest value are in the large cities and marts of trade and commerce, as in the vicinity of the Bank of England, or in Wall Street, where the results of labour are so concentrated and reflected upon land that it is necessary to cover it with gold in order to acquire by purchase a title to it and a right to its exclusive use. The difference between land at twenty-five dollars an acre and twenty-five dollars a square foot is simply that the latter is or may be in the near future covered or surrounded by capital and business, while the former is remote from these sources of value. One of the greatest possible, perhaps probable, outcomes of the modern progress of chemistry is that through the utilization of microbic organizations, the value of land as an instrumentality for the production of food may be increased to an extent that at the present time is hardly possible of conception. Again, in the case of air and water, although their total absolute quantity can not be increased, their available and useful quantity in any place, as before shown, can be by the agency of man, and their use made subject to hire or rent.

Consideration is next asked to the question at issue from what may be termed its practical standpoint. We have first a proposition in the nature of an economic axiom, that the price of everything necessary for production, or the hire of anything—land, money, and the like—without which the product could not arise, is, and must be, without exception, a part of the cost of that product; second, that all levies of the State which are worthy of being designated as taxes constitute an essential element of the cost of all products. The rent of an opera box, given to obtain a mere pleasure, constitutes a part of the fund out of which the musicians are paid, and if they are not so paid they will not play or sing. The rent given for the right to fish on a certain part of a river or its shores is a part of the cost of producing the fish as a marketable commodity. If a house is hired for the purpose of conducting any business in it, the price of that hire does most certainly enter into the cost of that business, whatever it may be, assuming that the use of the house is a necessity for carrying it

on. As no man will produce a commodity by which he is sure to lose money, or fail to obtain the ordinary rate of profit, the tax must be added to the price, or the production will cease. If a uniform tax is imposed on all land occupied, it will be paid by the occupier, because occupation (house-building) will cease until the rent rises sufficiently to cover the tax. The landlord assesses upon his tenants the tax he has paid upon his real estate; each tenant assesses his share upon each of his customers; and so perfect is this diffusion of land taxation that every traveller from a distant part of the country who spends even a single day at a hotel pays, without stopping to think about it, a portion of the taxes on the building, first paid by the owner, then assessed upon the lessees, and next cut up by them minutely in the *per diem* charge. But of course neither the owner nor lessee really escapes taxation, because a portion of somebody else's tax is thrown back upon them.

Is it possible to believe that in a city like New York, where less than four per cent of its population pay any direct tax on real estate, or in a city like Montreal, where the expenses of the city are mainly derived from taxes on land and the building occupancy of land, the great majority of the inhabitants of those cities are exempt from all land taxation? In China, where, as before shown, the title or ownership of all land vests in the emperor, and the revenue of the Government is almost exclusively derived from taxation of land in the form of rent, does the burden of tax remain upon the owner of the land? If the tax in the form of rent is paid in the products of the land, as undoubtedly it is in part, will not the cost of the percentage of the whole product of the land that is thus taken increase to the renter the cost of the percentage that is left to him; or, if the product is sold for money with which to pay the tax rent, will not its selling price embody the cost of the tax, as it will the cost of every other thing necessary for production? To affirm to the contrary is to say that the price which the Chinese farmer pays for the right of the exclusive use of his land is no part of the crops he may raise upon it.

Consider next the assertion of those who maintain the non-diffusion theory that taxes on land are paid by the

owners because the supply of land can neither be increased nor diminished. In answer to it we have the indisputable fact that the owners of land, whenever taxes are increased, attempt to obtain an increased rental for it if the circumstances will permit it. And the very attempt tends to increase the rent. Nothing but adverse circumstances, such as diminishing population or commercial and industrial distress, can prevent a rise in the rental of land on which the taxes are increased; and in the case of dwellings and warehouses the rise is almost always very prompt, because no man will erect new dwellings or warehouses unless their rent compensate fully the increase of taxation. And in any prosperous community, in which population increases in the natural ratio, there must be a constant increase of dwellings and warehouses to prevent a rise of rent, independent of higher wages and higher taxation. In no other occupation is capital surer of obtaining the average net remuneration than in the erection of dwellings and warehouses, and nothing but lack of general prosperity and diminishing population can throw the burden of taxation on real estate or its owners, without the slightest attempt at combination on their part. If the owners of land are not reimbursed for its taxation by its occupants, new houses "would not be erected, the old ones would wear out, and after a time the supply would be so small that the demand would raise rents, and house building begin again, the tax having been transferred to the occupier."

It is pertinent at this point to notice the averment that is frequently made, that cultivators of the soil can not incorporate taxes on the land in the price of their products, because the price of their whole crop is fixed by the price at which any portion of it can be sold in foreign markets. In answer to this we have first the fact that, to give the population of the world an adequate supply of food and other agricultural products, it is not only necessary that all the land at present under cultivation shall continue to be so employed, but further that new lands shall each year be brought under cultivation, or else the land already cultivated shall be made more productive.

The population of the world steadily increases, notwithstanding wars, epidemics, and all the evils which are

consequences of man's ignorance and of his improper use of things, his own faculties included. Hence, in case of increased taxation on land, the cultivator of the soil is generally enabled to transfer easily and promptly the burden of the tax to the purchasers of the products he raises, without abandoning the cultivation even of the least productive soil.

Furthermore, the exports of many agricultural products are due not to the cheapness of their cost of production, but to the variations which occur in the productiveness of the crops of other countries. M. Rouher, a French economist, and for a period a minister of commerce, thoroughly investigated this matter, and proved by incontestable data that almost invariably when the yield of breadstuffs in Europe was large in the country drained by the Black and Baltic Seas, it was small in the countries drained by the Atlantic. This variation in the yield of agricultural crops forces the countries where crops are deficient to purchase from those where they are abundant, or who have a surplus on hand from previous abundant harvests. In the United States, when the harvests are abundant, the American farmers, rather than sell below a certain price, keep a portion of their crops on hand until bad crops in Europe produce a foreign demand, which has to be supplied at once. Under such circumstances those who hold the surplus stock of breadstuffs, or any other product, would control the price, and not the foreigners who stand in need of it. The only check, then, to the cupidity of the holders of breadstuffs is the competition among themselves, which invariably suffices to prevent any undue advantage being taken of the necessities of the countries whose harvests are deficient. These bad crops occur frequently enough to consume all the surplus of the countries that produce in excess of their own wants. In fact, this transient, irregular demand is counted upon and provided for by producers just as much so as the regular home demand—hence is one of the elements that regulate production and control prices.

At this point of the discussion it is desirable to obtain a clear and true idea of the meaning or definition of the phrase "diffusion of taxes." As sometimes used in popular and superficial discussions, it is held to imply that every

tax imposed by law distributes itself equitably over the whole surface of society. Such implication would, however, be even more fallacious than an assumption that every expenditure made by an individual distributes itself in such a way that it becomes equally an expenditure by every other individual. On the other hand, a fair consideration of the foregoing summary of facts and deductions would seem to compel every mind not previously warped by prejudice to accept and indorse the following as great fundamental principles in taxation: *First*, that in order to burden equitably and uniformly all persons and property, for the purpose of obtaining revenue for public purposes, it is not necessary to tax primarily and uniformly all persons and property within the taxing district. *Second*, equality of taxation consists in a uniform assessment of the same articles or class of property that is subject to taxation. *Third*, taxes under such a system equate and diffuse themselves; and if levied with certainty and uniformity upon tangible property and fixed signs of property, they will, by a diffusion and repercussion, reach and burden all visible property, and also all of the so-called "invisible and intangible" property, with unerring certainty and equality.

All taxation ultimately and necessarily falls on consumption; and the burden of every man, under any equitable system of taxation and which no effort will enable him to avoid, will be in the exact proportion or ratio which his aggregate consumption maintains to the aggregate consumption of the taxing district, State, or community of which he is a member.

It is not, however, contended that unequal taxation on competitors of the same class, persons, or things diffuses itself whether such inequality be the result of intention or of defective laws, and their more defective administration. And doubtless one prime reason why economists and others interested have not accepted the law of diffusion of taxes as here given is that they see, as the practical workings of the tax systems they live under, or have become practically familiar with, that taxes in many instances do seem to remain on the person who immediately pays them; and fail to see that such result is due—as in the case of the taxation of large classes of the so-called personal property—to

the adoption of a system which does not permit of equality in assessment, and therefore can not be followed by anything of equality in diffusion. Such persons may not unfairly be compared to physicists, who, constantly working with imperfect instruments, and constantly obtaining, in consequence, defective results, come at last to regard their errors as in the nature of established truths.\*

According to these conclusions, the greatest consumers must be the greatest taxpayers. The man also who evades a tax clearly robs his neighbours. The thief also pays

\* In a like experience the Duke of Argyll, in his work *The Unseen Foundations of Society*, finds an explanation of the so-called theory of Ricardo, that the rent which a farmer of agricultural land pays as the price of its hire—that is to say, the price which he pays for the exclusive use of it—is no part of the cost of the crops he may raise upon it; a conclusion that can not be possibly true, unless it be also true that rent is paid for something that is not an indispensable condition of agricultural production. “Thus rights are in their very nature impalpable and invisible. They are not material things, but relations between many material things and the human mind and will. The right of exclusive use over land is a thing invisible and immaterial, as other rights are, and, although it is, and has been since the world began, the basis of all agricultural industry, it is a basis impalpable and invisible, whereas the material visible implements and tools, whose work depends upon it, are all visible and palpable enough, and all of which would never be were we to see them without the invisible rights upon which they depend. All of the former, in their place and order, are instruments of production; all of them catch the eye, and may easily engross the attention. On the other hand, if we are induced to forget those other elements, which are equally essential instruments of production, merely because they are out of sight, then our deception may be complete, and fallacies which become glaring when memory and attention are awakened may find in our half-vacant minds an easy and even a cordial reception.”

Adam Smith may be fairly considered as having fully committed himself beyond all controversy in his great work, *The Wealth of Nations*, to the principle that taxes, with a degree of infallibility, diffuse themselves when they are levied uniformly on the same article; and he even goes so far as to admit that a tax upon labour, if it could be uniformly levied and collected, would be diffused, and that the labourer would be the mere conduit through which the tax would pass to the public treasury. Thus he says, “While the demand for labour and the price of provisions, therefore, remain the same, a direct tax upon wages can have no other effect than to raise them somewhat higher than the tax.”

The German economist Bluntschli, who has carefully studied this question of the final incidence of all just and equitable taxes,

taxes indirectly, for he is a consumer, and must pay the advanced price caused by his own roguery for all he consumes, although he does steal the money to pay with. Idlers and even tramps pay taxes, but the amount that they indirectly pay into the fund is much less than they take out of it. People are sometimes referred to or characterized as non-taxpayers, and in political harangues and socialistic essays measures or policies are recommended by which certain persons or classes, by reason of their extreme poverty, shall be entirely exempt from all incidence or burden of taxation. Such a person does not, however,

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is in substantial agreement with the above conclusions, but prefers to use a different term for characterizing such finality than consumption, and expresses himself as follows: "In the end taxes fall on *enjoyments*. Hence the amount of each man's enjoyments and not his income is the justest measure of taxation."—*Bluntschli*, vol. x, p. 146.

M. Thiers, the French statesman and economist, was also a believer and earnest advocate of the theory of the diffusion of taxes, and lays down his principles in the following words: "Taxes are shifted indefinitely, and tend to become a part of the price of commodities, to such an extent that every one bears his share, not in proportion to what he pays the state, but in proportion to what he consumes." And in his book *Rights to Property* he thus illustrates the method in which taxation diffuses itself: "In the same manner as our senses, deceived by appearances, tell us that it is the sun which moves and not the earth, so a particular tax appears to fall upon one class, and another tax upon another class, when in reality it is not so. The tax really best suited to the poorest member of society is that which is best suited to the general fortune of the state; a fortune which is much more for the possession and enjoyment of the poor man than it is for the rich; a fact of which we are never sufficiently convinced. But of the manner, nevertheless, in which taxes are divided among the different classes of the state, the most certain thing we can say is: That they are divided in proportion to what each man consumes, and for a reason not generally recognised or understood, namely, that taxes are reflected, as it were, to infinity, and from reflection to reflection become eventually an integral part of the prices of things. Hence the greatest purchasers and consumers are everywhere the greatest taxpayers. This is what I call '*diffusion of taxation*,' to borrow a term from physical science, which applies the expression '*diffusion of light*' to those numberless reflections, in consequence of which the light which has penetrated the slightest aperture spreads itself around in every direction, and in such a manner as to reach all the objects which it renders visible. So a tax which at first sight appears to be paid directly, in reality is only advanced by the individual who is first called upon to pay it."



exist in any civilized community. If one could be found he would be a greater curiosity than exists in any museum. To avoid taxation a man must go into an unsettled wilderness where he has no neighbours, for as soon as he has a companion, if that companion be only a dog, which he in part or all supports, taxation begins, and the more companions he has, the greater improvements he makes, and the higher civilization he enjoys, the heavier will be the taxes he must pay.

Taxes *legitimately* levied, then, are a part of the cost of all production, and there can be no more tendency for taxes to remain upon the persons who immediately pay them than there is for rents, the cost of insurance, water supply, and fuel to follow the same law. The person who wishes to use or destroy the utility of property by consumption to gratify his desires, or satisfy his wants, can not obtain it from the owners or producers with their consent, except by gift, without giving pay or services for it; and the average price of all property is coincident with the cost of production, including the taxes advanced upon it, which are a part of its cost in the hands of the seller. Again, no person who produces any form of property or utility, for the purpose of sale or rent, sustains any burden of legitimate taxation, although he may be a tax advancer; for, as a tax advancer, he is the agent of the State, and a tax collector from the consumer. But he who produces or buys, and does not sell or rent, but consumes, is the taxpayer, and sustains a tax in his aggregate consumption, where all taxation must ultimately rest. In short, no person bears the burden of taxation, under an equitable, legitimate system, except upon the property which he applies to his own exclusive use in ultimate consumption. The great consumer is the only great taxpayer.

Finally, a great economic law pointed out by Adam Smith, which has an important and almost conclusive bearing upon this vexed problem of the diffusion of taxes, should not be overlooked—namely, his statement in *The Wealth of Nations* that “*no tax can ever reduce for any considerable time the rate of profit in any particular trade, which must always keep its level with other trades in the neighbourhood.*” In other words, taxes and profits, by the operation of the laws of human nature, constantly tend to



equate themselves. Man is always prompted to engage in the most profitable occupation and to make the most profitable investment. And since the emancipation from feudalism with its sumptuary laws, legal regulations of the price of labour and merchandise, and other arbitrary governmental invasions of private rights, individual judgment and self-interest have been recognised as the best tests or arbiters of the profitability of a given investment or occupation. The average profits, therefore, of one form of investment, or of one occupation (as originally shown by Adam Smith), must for any long period equal the average profits of other investments and occupations, whether taxed or untaxed, skill, risk, and agreeableness of occupation being taken into consideration.\* Natural laws will, accordingly, always produce an equilibrium of burden between taxed and untaxed things and persons. There is a level of profit and a level of taxation by natural laws, as there is a level of the ocean by natural

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\* As applied to the wages of labour, the truth of this principle is equally incontestable. "The sewing girl performing her toilsome work by the needle at one dollar a day, the street sweeper working the mud with his broom at a dollar and a half, the skilled labourer at two and three dollars, the professor at five, the editor at five or ten, the artist and the songstress at ten or five hundred dollars a day are all members of the working classes, though working at different rates. And it is only the difference in their effectiveness that causes the difference in their earnings. Bring them all to the same point of efficiency, and their earnings also will be the same." —*W. Jungst, Cincinnati.*

John Locke, in his treatise *On the Standard of Value*, treats of taxation, and shows conclusively that if all lands were nominally free from taxation, the owners of lands would proportionally pay more taxes than now, because the same amount of money must continue to be collected in some form, and the average profits of lands would only be equal to the average profits of other investments; and further, that the expense and annoyance (another form of expense) would be increased if the tax were exclusively levied in the first instance upon personal property; and hence the landowner would be burdened with his proportion of the unnecessary expense and annoyance. He also shows that you may change the form of a uniform tax, but that you can not change the burden; and that the change will increase the burden, if the new system is more expensive and annoying than the old. Locke wrote nearly a century before Adam Smith published his *Wealth of Nations*, and it would seem probable that Smith acquired his ideas relative to the average profits of investments from Locke.

laws. In fact, all proportional contributions to the State from direct competitors are diffused upon persons and things in the taxing jurisdiction by a uniformity as manifest as is the pressure upon water, which is known to be equal in every direction.

A word here in reference to the popular idea that the exemption of any form of property is to grant a favour to those who possess such property. This idea has, however, no warrant for its acceptance. Thus, an exemption is freedom from a burden or service to which others are liable; but in case of the exclusion of an entire class of property from primary taxation, no person is liable, and therefore there is no exemption. An exclusion of all milk from taxation, while whisky is taxed, is not an exemption, for the two are not competing articles, or articles of the same class. It is true that highly excessive taxation of a given article may cause another and similar article, in some instances, to become a substitute or competing article; and hence the necessity of care and moderation in establishing the rate of taxation. We do not consider that putting a given article into the free list, under the tariff, is an exemption to any particular individual; but if we make the rate higher on one taxpayer or on one importer of the same article than on another taxpayer or importer, we grant an exemption. We use the word "exemption," therefore, imperfectly, when we speak of "the exemption of an entire class of property," as, for example, upon all personal property; for if the removal of the burden operates uniformly on all interested, or owning such property, then there can be no primary exemption.

## CHAPTER XXVII.

### THE BEST METHODS OF TAXATION.

#### PART I.

THIS historical survey of tax experience among peoples widely differing in their economic condition and social relations, and this examination of the scope and practice of taxation, with especial reference to the tax systems of the United States as defined and interpreted by judicial authority, prepare the way for a discussion of the best methods of taxation for a country situated as is the United States. General as are the theoretical principles underlying taxation, the application of these principles to existing conditions must be modified to meet the long usage and inherited prejudice of the people, and the form of production or manner of distributing wealth. This holds true in the face of appearances so opposed to it as to defy definition and acceptance. No less promising field for an income tax can be pictured than British India, and few more promising fields than France. Yet India has borne such a tax for years, while France will not permit a true tax on income to be adopted as a part of its revenue system. In the latter country the plea is made that the upper and middle classes already pay under other forms of taxation more than their due proportion of the public burdens, and an additional and necessarily discriminating duty laid upon them will only make this inequality the greater. Class interest may thus oppose its veto to a change that promises to reduce the burdens of one class of taxpayers at the expense of another; or may even oppose a change that offers the chance of collecting a larger revenue with less real difficulty and sacrifice on the part of the taxed. No opposition can set aside even temporarily the great rules that clearly define a tax from tribute, a legal and beneficial taking by the state of a certain part of the public

wealth from a demand that involves waste or mischievous expenditure, for which the state or people derive no advantage commensurate with the cost, or from which individuals obtain a gain not defensible in justice, and at the expense of only one part of the community.

After so many centuries of experiment, in which hardly a possible source of state revenue has escaped attention, some knowledge of the great principles of taxation might have been evolved. Unfortunately, the experience of one nation is not accepted as containing lessons applicable to the needs or conditions of another, and one generation rarely appeals to history save to defend its own experiments. Ignorance, half knowledge, which is quite as dangerous, and interest guide or influence legislation, and those who predict failure or danger are regarded as theorists, and denounced as impractical. Nowhere is the tendency to move independent of enlightened knowledge more evident than in the United States. At every appearance of the tax question, State and national legislatures are overwhelmed with measures that have been tried in the past, and after a thorough test condemned beyond any hope of defence.

Yet history shows the gradual disappearance of certain forms of taxation which enjoyed great popularity for a time, and accomplished the end of their creation in a crude and often cruel manner. Looking over long periods of time, it is seen that some advances have been made, rather from a change in the economic condition of the people than from a true appreciation of the principles in question. The development of popular liberty has been an essential factor, and the alterations in tax methods require a close analysis of the causes leading to the rise and dominance of political and constitutional principle. While it is true that a popular uprising against fiscal exactions usually marked the limit of endurance of an oppressive system, it is also true that the same uprisings marked the completion of one stage of political development, and the readiness or even the need of entering upon a new stage. In one sense the progress of a people toward civilization in its highest meaning may be illustrated by its fiscal machinery and methods of obtaining its revenue from the people. It will be of interest to glance at some of these passing phases

which have generally come down to a late day, and are still to be found in activity in some of the most advanced states of Europe.

The practice of farming out the revenues of a state or any part of it has become nearly obsolete, and where it does exist is the mark of a fiscal machinery as yet not fully developed. The opportunities and temptation which the contract system offered for oppressing the taxpayers were apparent long before the state was in a position to assert its ability to make its own collections. In France the *fermiers généraux* were a political factor, standing between the king and his people, regarded as necessary to the former and as oppressors of the latter. Their unpopularity, in part justified by their conduct, was a not unimportant item in the arraignment of royalty by the people. Wherever introduced, the farming of taxes proved in the long run as unwise politically as it was unprofitable financially; and the only reasonable defence for adopting it was the want of strength in the state to command its own revenue—a want as likely to arise from the dishonesty of its agents as from a political weakness. In early times the most universal manner of supplying the treasury of the state, the farming of taxes has now become so rare as to be classed as a curiosity. Italy still employs this machinery to collect her taxes on tobacco, and Spain from necessity has mortgaged her taxes to the bank, with the task of collecting them.

Of the same general character are the state lotteries, of which some few and quite important instances may still be found in action. Of the immorality of these instruments there can be little doubt, and there is quite as unanimous an opinion as to their inefficiency as fiscal instruments. Yet it is only within very recent years that state lotteries have been discarded even in the most advanced countries. The machinery of lotteries has often been modified, but, no matter how altered in details, they all have appealed to the love of games of chance. Adam Smith asserted that the “absurd presumption” of men in their own good fortune is even more universal than the overweening conceit which the greater part of men have in their own abilities.\* Yet another assertion of the same

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\* *Wealth of Nations*, vol. i, p. 112 (Roger's edition).

writer is as true: "The world neither ever saw, nor ever will see, a perfectly fair lottery, or one in which the whole gain compensated the whole loss." Where the state undertakes it, there is a profit generally assured to the state, but that profit is by no means certain, and can not make good the demoralization introduced among the people. State lotteries are still a part of the revenue system in Italy and Austria (proper), where the receipts are important, but show a decided tendency to diminish; Hungary and Denmark, where they are of little moment; and in Spain, where they are retained because of the general incapacity of the administration to reach other and more profitable sources of revenue. The experience of the State of Louisiana in connection with a State lottery is too recent to require examination. It is not probable that once abandoned such an instrument for obtaining money from the people will be revived, save as a last resort.

The State monopoly in the manufacture and sale of an article for fiscal purposes holds a place of high importance in European countries, and is met elsewhere under conditions not so favourable to its maintenance. As an example of the latter may be cited the colonial policy of the Dutch in their possessions in the East. After the termination of the trading companies, the Government undertook the entire control of the colonies, and sought to make them a source of revenue. The natives were to be taxed, but, having little of their own to be taxed, and practising no occupation that could of its own volition become a profitable source of revenue, the state undertook to organize industry, and, by creating an opportunity for employing the labour of the natives, to receive the profits of production for its own uses. The native chiefs were made "masters of industry" and collectors of the revenue; and a certain part of the labour of the natives, one day in every five, was decreed to the state. In order to derive a profit, this labour must be bestowed in cultivating some product that finds a market in international trade. Hence arose the importance of the sugar, coffee, tobacco, and spice crops of these Dutch islands, and for many years a handsome profit to the treasury was obtained from the management and sales of product. With the great fall in the prices of sugar and coffee throughout the world, and the narrowing

of the market for cane sugar, the Government obtained a less income each year, and has found it of advantage to relax the conditions surrounding cultivation, and to throw the management of the plantations more and more into private hands. To such an extent has this transition been effected that the state can no longer be considered as controlling a monopoly in product or sales, and is content with a revenue from other sources, one that does not even cover the expenses incurred in the colonial system. This experiment differs widely from those industries undertaken with the aid or encouragement of the state to be found in India. It was not with a fiscal object that they were established, and not infrequently the state sacrifices revenue by releasing them from tax burdens they would ordinarily endure. As one of the few remaining instances of the direct participation of a state in the production of products intended for foreign markets, yet undertaken and maintained for fiscal reasons, the history of the Dutch colonies in the East is instructive.

In Prussia the working of certain mines is in the hands of the state, and was originally looked upon as an important contribution to the income of the state. As in the Dutch experience, the changes in production throughout the world have greatly reduced the returns and made the income variable; yet there is little disposition to dispose of these possessions. "The danger of mineral supplies being worked in a reckless and extravagant manner without regard to the welfare of future generations, and the dread of combinations by the producers of such commodities as tin, copper, and salt, with the aim of raising prices, have both tended to hinder the alienation of state mines." \*

The more common form of state monopoly is that which occupies a middle position, established for reasons of public safety or utility as well as of revenue. The salt monopoly enforced in Prussia was only abolished in 1867, and is still maintained in every canton of Switzerland. The strongest plea in its defence has been the guarantee by the state of the purity of the article sold, and this phase of the question has superseded the revenue aspect. Few

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\* Bastable. Public Finance, p. 181.

articles of prime necessity, like salt, are subject to monopolies imposed by the state, and by a process of elimination it is only articles of luxury or voluntary consumption that are regarded as fit objects of monopoly for the benefit of the state.

A tax imposed upon an article at a certain stage of its production or manufacture may enforce the expediency or necessity of a state monopoly. Where the supervision of the state agents must be so close as to interfere with the conduct of the industry, the state intervenes and itself controls the manufacture and sale. Tobacco has long been subject to this fiscal *régime*, and, proving so productive of revenue, there is little to be said against a monopoly by the state of its manufacture and sale.

In Italy the tobacco monopoly is conceded to a company, but its return of net revenue to the state is nearly as large as the revenue derived from the taxes on real property (about thirty-eight million dollars a year). Prussia imposes a charge on the home-grown tobacco by a tax on the land devoted to its culture, but the return is very small, and Bismarck wished to introduce a true tobacco monopoly, modelled on that of France. But the conditions were opposed to his scheme, for the use of tobacco is general throughout the empire, and a proposition to increase its price by taxation or modify its free manufacture and distribution excited a widespread opposition. France maintains a full monopoly, and finds it too profitable to be lightly set aside unless some equally profitable source of revenue is discovered to make good the loss its abolition would involve.

While historical support is given to the maintenance of a monopoly as in France, it is not probable that the system will find imitators in other states, however tempting the returns obtained might seem. Great Britain has by her insular position solved the problem in another way. By interdicting the domestic cultivation of tobacco, all that is consumed must be imported, and a customs duty offers a ready instrument for making the plant, in whatever form it enters, contribute its dues to the exchequer. In Russia, as in the United States, where tobacco is a domestic product, the tax is imposed upon its manufacture, and this method requires supervision but no monopoly of the state.



The tobacco *régime* is defended almost entirely on fiscal grounds, and as a monopoly, an extreme measure, has proved its value as an instrument of taxation. Other reasons, of a moral character, are urged to induce the state to monopolize the manufacture and sale of distilled spirits. Both France and Germany have considered this question, and, in spite of confident predictions of a large profit, have decided not to undertake it. Russia, on the other hand, has taken it up quite as much on social as on revenue grounds, and is gradually securing a monopoly of the trade in spirits. The initial cost of the undertaking is large, and, as the system has not yet been perfected, it is too early to give a judgment on its availability as a financial instrument.

The transit dues, once commonly used by different countries, have been generally abandoned, and in China must they be sought for in their original forms of vexatious and unprofitable force. They arose from a desire to derive some benefit from a commerce permitted grudgingly, and rarely attaining any high results. The same end was sought by duties on exports, much employed when the country was supposed to be drained of its wealth by what was sent out of it. The conditions necessary for a successful duty on exports are not often found, and only in a few countries are they now existent. In Italy, South America, and Asia, exports of certain natural products are taxed, and, as in the case of Brazil, yield a notable revenue. In view of the rapid advancement of production in new countries and of inventions in the old, whereby many natural monopolies have been destroyed and competition made more general, such duties prove to be more obstructive to trade than productive of revenue, and are rapidly being abandoned. In spite of a formal prohibition of export duties in the Constitution of the United States, they are sometimes suggested in all seriousness.

In thus clearing the path of what may be called dead or dying methods of recent tax systems, the advantages enjoyed by the United States in their freedom from such survivals become more evident. The practice of farming taxes never gained a foothold in any part of the country. Lotteries have been occasional, and with two exceptions have been conducted on a limited scale—that of Louisiana

is well known; an earlier instance is less known. During the Revolution one of the means resorted to by the Continental Congress for income was a lottery, but the attempt proved disastrous to all concerned, and was finally abandoned even more thoroughly than was the continental currency. State monopolies of production and sale of any commodity have never met with favour, and stand condemned in the desire for individual initiative. As sources of revenue, the public lands, state control of the post office, and of such municipal undertakings as the water and, in a very few cases, the gas supply, has been employed, and in place of profit the mere cost of management is sought. More than any country of continental Europe, the United States has depended upon taxes, pure and simple, unsupported or modified by state domains, state mines, state manufactures, or state monopolies. Even Great Britain in her local taxation is bound and hampered by precedent, and pursues a system that is notoriously confused, costly, and vexatious. Long usage and the erection of independent and conflicting authorities on principles other than fiscal have imposed upon the local agents the duty of assessing and collecting county and borough taxes which are as indefensible in theory as they are difficult in practice.

From this weight of tradition and precedent the United States has been almost entirely free, and it was possible to construct out of small beginnings systems of Federal and State taxation at least reasonable and consistent, producing an increasing revenue with the rapid development of wealth and the larger number of taxable objects; and so elastic as to adapt themselves to such changes as are inevitable in any progressive movement of commerce or industry. That no such system has resulted after a century of national life, and an even longer term of local (colonial and State) activities, these papers have tended to show. That the time is at hand when the problem of a thorough reform of both State and Federal taxation must be met, current facts prove beyond any doubt. If I have aided in a proper comprehension of these problems, and, by collecting certain experiences in taxation among other peoples and in different stages of civilization, contributed toward a proper solution, the end of this work

will have been attained. It is not possible to introduce a complete change of policy at once; it is not only feasible but necessary to indicate the direction this change should take, and the ends to be secured in making them. And first as to Federal taxation:

In a democracy like that of the United States, the continuance of a mixed system of direct and indirect taxes is a foregone conclusion. Not that there is an absence of change or modification in the details of this double system, or in the application or distribution of a particular impost or duty. To deny such modification is to deny any movement in the body politic, or any progress in the industrial and commercial economy of the people. There is a steady and continuous movement in every direction, and the mere effort to escape taxation results in a new adjustment of related facts. This development has, partly through necessity and partly through a rising consciousness of what a tax implies, been tending from indirect to direct taxes. Ever restive under a rigid supervision by the state of private concerns, there has been a wholesome opposition to inquisitorial taxes. But this opposition has been carried too far, and is due more to the ignorant and at times brutal disregard by the agents selected for enforcing the law than to an appreciation of the injustice of the tax. Whether in customs or excise, the same blunders of management have been committed, and created a spirit in the people that is injurious to their best interests. On the one hand, private enterprises have been unduly favoured by the removal of foreign competition, a favour that is now disappearing through the remarkable development of domestic competition. Thus taxes have been extensively used for other purposes than to obtain revenue, and for private ends. On the other hand, there has been created the feeling that taxation is a proper instrument for effecting a more equal distribution of wealth among the people, and readily becomes an instrument of oppression.

The almost absolute dependence of the Federal Government upon the customs duties for revenue through a great part of its existence was a striking fact. The simplicity of collection and the comparatively moderate scale of duties, although considered high at the time of imposition, gave this branch of the possible sources of revenue a

magnified importance. The development of the country was slow, and at times greatly hampered by the tariff policy; but until about 1857 no other source of income was needed to meet the expenditures of the Government in a time of peace.

In recent years this has all changed, and not for the better. The immense development in manufactures and financial ability accomplished since 1860 has made a tariff for protection an anachronism. The political features of customs legislation have been pushed so far as almost to overshadow the fiscal qualities. The wave of protectionism that followed the abrogation of the commercial treaties of Europe about 1880 has resulted in tariffs framed with the desire to injure the commerce of other states rather than to meet the needs of a treasury. In the United States this policy has been carried beyond that of Europe, and the tariff now in existence is more protective than any hitherto enforced, short of absolute prohibition of imports.

In more respects than one the tariff law of 1897 was an extreme application of the protective policy. Each year the United States has demonstrated its ability not only to meet the industrial competition of the world on an equal footing, but to engage with it aggressively and with complete success. It is not necessary to give the figures of exports of manufactures to establish this fact; it is now beyond question. To frame a measure of extreme protection was, therefore, to overlook the most striking phase of the industrial situation existing in the United States. With an ability to manufacture cheaply and on a grand scale, and with a capacity to supply the demands of a market larger than any home market, there was no foreign competition to encounter, and the higher rates of duties meant nothing, either for protection or for revenue. In carrying further into action a tariff framed more for protection than for revenue, a twofold error was committed. The provisions were so complicated as to make the application difficult, and in applying these provisions inquisitorial and vexatious regulations were necessary to assure even a reasonable fulfilment of the requirements. In former tariff laws a general description carried a large class of articles, and a uniform duty, usually *ad valorem*, was collected. But, under the demand for a more scientific

tariff, these general classes were broken up into a number of enumerated articles, each one carrying a specific or mixed duty, and an omnium or basket clause at the end to catch any article that could not be included in one of the enumerations. This desire to fix specific rates upon each imported commodity has been applied more generally in the law of 1897 than in any previous tariff act. An examination of the imports of manufactures of textile fibres will illustrate this increase of complexity without any increase of revenue. Indeed, these classifications and rates, being suggested by interested parties, have for their object a reduction of imports, and as a rule a reduction in revenue from them follows.

The second objection to the increasing complexity of the tariff laws is to be found in the petty annoyances imposed upon importers and others in enforcing the not always consistent provisions of the law. These vexations are made all the more telling by the fact that the administration of the law is apt to be in the hands of those who are openly hostile to foreign importations, and therefore regard the importer in an unfriendly spirit. The power given to the customs agents is enormous, and it is not remarkable that it is abused. The demand for samples, the appraisement of articles, the classification of new or compound commodities, all offer room for controversy, which is not always decided by an appeal to the courts of justice. In special instances, where a section of the law has been framed in behalf of a special interest, the attempt to enforce it becomes petty tyranny of the most intolerable kind.

In operation the law soon exhibited its failure as a revenue measure. Although duties were generally increased, the more important articles taxed yielded a smaller revenue than under lower rates. The aggregate collections under the bill did not meet the expectations of its sponsors, and for two reasons: first, because the higher duties discouraged imports; and, secondly, the demand for imported articles was steadily decreasing under the expanding ability of home manufactures to meet the needs of the market. No measure short of a direct encouragement to importations can change this situation, or prevent the further shrinkage in the use of foreign manufactures.

It follows that the tariff, unless radically altered, can no longer be depended on for a return sufficient to defray one half of the rapidly increasing expenditures of the national Government. By refusing to impose moderate duties on articles of general consumption, revenue is sacrificed; by insisting upon imposing protective duties where little revenue can be had, the tariff is converted into a political weapon. Its dangerous qualities are strengthened by turning these duties against the products of certain countries, a policy specially fit to invite reprisals.

Even the framers of this latest tariff entertained the belief that some provision should be made for breaking its full effect. The familiar scheme for reciprocity treaties, under which moderate concessions in some of the duties could be made, was retained; but France was the only power that could have an object in seriously entertaining the proposition to enter into a negotiation. No real reduction in duties could be given to Germany or any other country, and it has become a recognised fact that Germany does not hesitate to seize an opportunity to exclude the products of the United States, and on the same grounds as support the high duties in the American tariff. The system of drawbacks has ceased to be of much moment in our customs policy, and in the export interest in canned goods finds its chief exercise. Nor does a privilege to manufacture in bond affect more than one article of importance—ores of lead containing silver. No matter how it is regarded, the tariff of 1897 was not framed for revenue, and in experience has not proved sufficiently productive to meet its share of the expenditures of Government. The animus of its sponsors in attaining the immediate political object sacrificed the more important and permanent object of revenue. It is a law which can be productive of revenue only in periods of great commercial activity.

Were the true object of customs duties—revenue—to be kept in view in tariff legislation, it would be a simple matter to devise a measure that would be satisfactory and highly productive of revenue. In the fifteen hundred or more articles enumerated in the tariff schedules, more than fourteen hundred are non-productive, or yield so small a return as to have in the aggregate no appreciable effect

on the total receipts. The number left after so large an exclusion can be still further reduced without reducing the revenue one tenth; and it is from a small number of articles, hardly twenty-five, that the great part of the customs revenue is obtained. By reducing the rates of duties on these to a point of highest revenue efficiency, at which the import is not interfered with and yet not encouraged, a higher return could be had than from the existing complicated, overloaded, and political compilation of duties, usually imposed for any reason other than what they will bring into the treasury.

When, therefore, the best methods of Federal taxation are broached, the reform of the tariff stands first in importance. It is necessary to bring it more into line with the industrial conditions of to-day, which call for foreign markets rather than a domestic or closed market; and for a liberal commercial policy in place of one that regards the products of other countries, whether imported in the crude or manufactured forms, as constituting a menace to American labour and American interests. It calls for a systematic and intelligent revision, which shall throw out such duties as are no longer of service even for protection, and to reduce those that are hostile to the products of other countries and bear in themselves the seeds of reprisals in the future. Now that the United States is going into the great markets with its manufactures, and obtaining a foothold against all competitors, the invitation to retaliation holds a danger far greater to its own interests than any that can be inflicted on other peoples. The greater the advances made the more readily will recourse be had to reprisals and hostile legislation; and in support of every act appeal may be had to examples set by the United States.\*

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\* "The old protectionist, with the stock arguments about the influence of the tariff upon wages and all the rest of it, is beginning to die out. He told us all he had to say about the 'pauper labour' of Europe, by which he often meant the best-educated and most skilful artisans of the world. We got tired of hearing about how the importer paid the tax, how it was Europe and England in particular that was all the time squeezing our lives out, till nearly all of us, being of English ancestry ourselves, wondered whether we, even, could be so good as we hoped we were, if we had sprung from something so essentially perverted and bad. We were told,

too, that American tourists who went to Europe and spent money there which they ought to have squandered at home were not friends of their country, and that they did us a particularly hostile act when they brought clothing, statuary, or diamond rings back with them from foreign parts. A season of high prices was a real heaven, and wars and fires were good things because they destroyed property that would have to be replaced, and this would create that demand which, reacting on supply, would increase prices. To say that an article was cheap was to say that the political party in power was no longer worthy of public confidence. It was related that each government could make its people so rich, and the idea was thought to have been traced down from Henry C. Carey, that the rest of the world could be safely disregarded altogether.

"Seriously, who believes any of this stuff nowadays? The protectionist is not reckoning with such popular impotency and stupidity. He believes in his fellow-man, and wants to give him a helping hand. He does not care what effect it has on England or Ireland. He is not sure that a protective tariff in and of itself will increase the wages of the workmen. He is even inclined to think that less wages and profits would do well enough for every man, if it were cheaper to live and there were not such extravagant demands upon every person from all sides—this without being a socialist. He is certain that 'a cheap coat' does not necessarily make 'a cheap man,' but the cheaper the coat the better it will be for the wearer. That is what we are all trying to do, improve our processes, increase our effective working power, which means, if you please, to make things cheaper."—*The Manufacturer* (organ of the Manufacturers' Club of Philadelphia).



## CHAPTER XXVIII.

### THE BEST METHODS OF TAXATION.

#### PART II.

IN passing from the tariff, or duties on imports, to the internal or excise taxes imposed by the Federal Government, there is evidently a distinct change in purpose. However subject to abuse the tax on distilled spirits has proved, and however frequently its agency has been invoked to exaggerate the profits of interested parties, there has never been an open and avowed intention of turning it to private gain. The policy that has become almost inseparable from the customs tariff, and is by most people regarded as inherent in all customs legislation, has not been transferred to the internal-revenue taxes save in one or two instances of recent application and secondary importance. The danger of permitting taxation to be employed by either State or Federal Government for a purpose other than that of raising necessary revenue has been dwelt upon. When a police power is exercised in conjunction with a tax framed for revenue, and is regarded as the more important function to be performed, the policy requires careful examination. If revenue is the real object, the method of imposing the tax and the determination of the rate which will give the highest return with the least interference in the production, distribution, and export of the commodity taxed remains to be defined. If restriction in manufacture, sale, or consumption is intended, the question is no longer one of taxation proper, but of police regulation. The Federal taxes on oleomargarine, filled cheese, and mixed flour are of the nature of police inspection, and the tax on the circulation of State banks, amounting, as it has, to prohibition, is a still more extreme exercise of the same power. The imposition and collec-

tion of these duties have a penal quality, an intention to restrict or prohibit the production or sale or use of some article. They are not properly taxes; they are not a proper application of tax principles, but have originated in private interest, or in the deliberate intention to constitute a monopoly, State or other.

The approach of war, or its actual presence, is made the excuse of an extension of taxes, and the Federal Government tacitly admits its inability to increase indirect taxes on consumption by its general resort to an extension of the internal taxes and excise. The instrumentalities of business offer a fair field for stamp taxes, and these, when not so burdensome as to invite evasion, are acceptable because of the ease with which they are assessed and collected. A specific duty on the more important acts of commerce and daily business may be evaded, it is true, but not when the paper or instrument taxed must become public evidence. Stamps of small denomination on bonds, debentures, or certificates of stock and of indebtedness; on a bill of sale or memorandum to sell; on bank checks, drafts, or certificates of deposit; bills of exchange, draft, or promissory note; money orders and bills of lading; on express and freight receipts, on telegraph messages, and a large number of legal and other instruments, such as leases, mortgages, charter party, insurance policies—these are simple duties productive of large returns, and not unequal in their weight. The law of 1898 included such stamp taxes, as well as others on proprietary articles and wines. It was not easy to predict the incidence of these rates, and the distribution has been unequal. The charges of one cent on telegraph messages and express packages are paid by the sender in the larger number of cases, the companies merely adding a penny to their rates. This was not the intention of the law, and the courts have held that it was not so intended. The individual is powerless in a few transactions, and only the great concerns are able to avail themselves of this decision. The duties for seats or berths in a parlour car or for proprietary medicines, are paid by the company or manufacturer, though in certain preparations the price to the consumer was advanced on the passage of the act. With all their drawbacks, and they are not few in number, these stamp duties

afford a ready means of obtaining a good revenue without increasing unduly the general burdens of taxation. The law of 1898 was modelled after that of 1863, and many of the rates and descriptions will undoubtedly be incorporated into the permanent internal-revenue system of the country—a measure enforced by the remarkably unequal returns derived from the customs.

The existing system of internal duties is even more defensible than the tariff as a source of revenue. Its inequalities, due to the haste in which the measure was prepared and the inexperience of those who framed the provisions and fixed upon the rates, are worn away in use, and where the rates are moderate and are not infected with a penal quality, the community adapts itself to them, accepting them as a necessary convenience. In the United States this spirit of acquiescence is most marked, not only because of a natural patience of tax burdens, but because of as natural a fear of other untried and more radical or oppressive measures. The situation of "business" when a general tariff bill is pending in Congress is one almost of panic, and the scramble to protect interests or to obtain some special advantage against rivals has become a scandalous feature of tariff revision. Except in the instances named, as oleomargarine and filled cheese, the internal-revenue system presents less of a field for such an exhibition of greed and self-interest; but the spirit duties, and even the tobacco rates, may be used in such a way as to favour the large manufacturer against the small concerns, and are to that extent misused and applied for purposes antagonistic to those properly pertaining to taxation. In a time of tax revision the suggestions for new taxes and ideas for changing the old are freely offered, and do not stop short of absolute prohibition of an industry, of total destruction of interest. The vagaries of a legislative body under such suggestions have instilled into the public mind a wholesome fear of its possible acts and fully explain the timid and uneasy condition of "business" when a general tax measure is under discussion. Whether it be the manufacturer or producer seeking protective duties, or the Granger or Populist asking for taxes of confiscation against capital and accumulated property, the spirit is the same—a desire to turn taxation to improper purposes.

The tendency of Federal taxation to turn to taxes on capital and the instruments of "business"—direct, rather than indirect taxes—found its most extreme illustration in the income tax of 1894, the principles of which have already been discussed. It finds a more moderate and restricted exercise in certain graduated duties under the act of 1898, and especially in the duties on legacies and distributive shares of personal property. It was no sentimental or even theoretical argument based upon the right of inheritance or the inequality of taxation that led to the adoption of these duties in 1898; it was only a blind following of the provisions of the earlier act and the consciousness that revenue must be had at every cost, and no possible source of income should be overlooked. Yet the legacy tax is essentially a tax of democracy and defensible for much the same reasons as a tax, whether graduated or not, upon income might be.

By the act approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," the national Government imposed a tax upon legacies and distributive shares of personal property. This tax has been one of the features of the tax law of 1862 (§§ 111–114), but in a much simpler form and in a form better calculated to produce a revenue. This earlier law imposed a duty on all legacies exceeding one thousand dollars in amount, but very properly made a distinction in the rate according to the degree of connection between the person from whom the property came and the receiver of the legacy. Thus, lineal issue, or lineal ancestor, brother or sister, should pay at the rate of seventy-five cents for each and every hundred dollars of the clear value of the interest in the property. A descendant of a brother or sister of the decedent paid double this rate; an uncle or an aunt was taxed three dollars for every one hundred dollars passing; a great-uncle or a great-aunt, four dollars; and persons in any other degree of collateral consanguinity, or a stranger, or a body politic or corporate, five dollars. The only exemption made was in favour of a wife or husband. As only personal property was intended to be reached, all land and real estate escaped the duty.

The law of 1898 made important modifications in these rates and manner of assessing. In the first place, the

rates fell only on legacies in excess of \$10,000, a limit ten times larger than that of the law of 1862. The degrees of relationship were the same, the rates were copied from those of the earlier act, and the same exemption of property passing between husband and wife was admitted. But the idea of a progressive tax was ingrafted into the law. Thus, the old rates applied only to legacies of more than \$10,000 and not more than \$25,000. When the property passing was valued between \$25,000 and \$100,000 the rates were multiplied by one and a half; between \$100,000 and \$500,000, they were multiplied by two; between \$500,000 and \$1,000,000, they were multiplied by two and a half; and by three when the property was in excess of \$1,000,000. In restricting the tax to personal property passing by inheritance the measure aims at a crude means of making the burdens of personal more nearly approach those of real property. No such consideration controlled the views of those responsible for the act, and, after all, it offers only a question of theoretical interest. The inheritance taxes collected in many of the States may have owed their adoption to such an idea, but the United States, in taking up these duties, merely saw a means of obtaining revenue without regarding the actual results of the tax on the estates paying it.

“The inheritance tax in one form or another has come to stay, and new States are being added every year to the list of those which have adopted it. Five years ago it was found in only nine States of the Union—Pennsylvania, Maryland, Delaware, New York, West Virginia, Connecticut, Massachusetts, Tennessee, and New Jersey. During the first half of 1893 Ohio, Maine, California, and Michigan were added to the list, though the Michigan law was afterward annulled because of an unusual provision in the State Constitution which was not complied with. In 1894 Louisiana revived her former tax on foreign heirs; Minnesota adopted a constitutional amendment permitting a progressive inheritance tax which has not yet been given effect by the Legislature; and Ohio added to her collateral inheritance tax a progressive tax on direct successions. In 1895 progressive inheritance taxes were adopted in Illinois and Missouri, and an old proportional tax was revived in Virginia; and last year Iowa adopted in part

the inheritance tax recommendation of her revenue commission." \*

The real problems are to be encountered in local taxation. The many different methods used in the different States, the want of uniformity in the local divisions of each State, and the extraordinary diversity in the interpretation or application of tax laws by the courts and executive authorities of the States have introduced a confusion, to end which, many would invoke the intervention of the Federal Government. The haphazard manner in which the laws have been framed and passed is only the least notable explanation of the variety of phrase and interpretation to be found. Even were the Federal Government to establish definitions, and frame uniform rules of assessment, there would still be room for difference. The customs tariff is known to be variously applied in different parts of the country, and there is greater certainty in the tariff rate than could be found in a tax resting on the assessed valuation of land, for example.

The difficulty encountered by France in its attempt to determine the net income from land for the purposes of taxation carries an important lesson. Failing to obtain uniformity of appraisement of this net income under the crude method first employed—of basing it on the character of soil and nature of cultivation, deducting the expenses of cultivation—a *cadaastre* was decreed.† In this *cadaastre* each particular piece of property was recorded, with its boundaries, its manner of cultivation, and its net rental. Began in 1807, it was not completed until 1850, and proved of little value, as no provision had been made for recording the changes in cultivation, rentals, or other conditions, except those of ownership, buildings, and exemption from taxes. Instead of proving a successful means to a desired end, it “turned out to be a stupendous disillusionment.” “The experience of both the western Prussian provinces and of France showed that the newly

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\* Max West, in *North American Review*, May, 1897, p. 635.

† The word *cadaastre* was derived from the Latin *capitastrum*, or register of *capita*, *griga*, or units of territorial taxation into which the Roman provinces were divided for the purposes of *capitatio terrena*, or land tax. It is of modern use and is locally found in Louisiana.

constructed *cadastre* was of considerable service in equalizing the land tax within a relatively small area, but not as a basis for alterations in the contingents to be paid by large and widely separated regions. The officials in charge of the *cadastre* on the Rhine, as well as those in France, themselves admitted that any computation of net income was uncertain; that the coincidence of the figures obtained by the cadastral computation with the actual net income could never be assured; that the figures afforded by the *cadastre* were rather of the nature of a proportion, while uniformity of assessment was to be attained rather by observation of the business transacted than by depending on the figures obtained by computation." \* This effort to discover and record the net income from land was a failure.

So thorough an experiment, carried through so long a time, and presenting an example to be avoided, was in fact imitated by Prussia under a law of 1865. In each division (*Kreis*) was appointed a commissioner, who was chairman of a committee, the size of which ranged from four to ten members, according to the size of the division. One half of this committee was appointed by the representatives of the division, and one half by the central Government. A number of divisions formed a department, with its commissioner and committee of similar composition as in the division, and above all was a central committee, presided over by the Minister of Finance. The valuation was accomplished in less than four years. The method was applied only to land employed in agriculture or forests; a separate law provided for the taxation of buildings and gardens. In the end the results were no better than those obtained in France. In either case a plan too refined to work to advantage had been employed, and, apart from its simplest function, that of making a general survey of the land and the uses to which it was applied, it could not advance the theory of a proper land tax. No modification could make it a better instrument of taxation. The gross income from land as a taxing basis would involve heavy injustice, and further supervision by government officers could not do away with the mechanical difficulties of secur-

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\* Cohn. Science of Finance, p. 477.

ing uniformity. The English plan of making rental value the foundation is more easily applied and gives better results.

If land be difficult of assessment, personal property offers a very much more difficult problem. On this particular question this country has much to learn from the experience of other governments. In Great Britain a Royal Commission has been making a study of local taxation, and, in a preliminary report, concludes that an alteration in the law for the purpose of obtaining a uniform basis of valuation in England and Wales is a necessary preliminary to any revision of the existing system of local taxation. It has been already stated that the poor rate constituted the basis of valuation of property for local rates. In its development the system has become more complicated. Two valuations of the same property may be made for raising imperial taxes—namely, one for the income tax and one for the land tax. Three valuations of the same property may be made for raising local rates—namely, one for the poor rate, one for the county rate, and one for the borough rate. Here, then, are five different valuations in activity.

Of these the parish was the first and most important division, having been introduced in the sixteenth century, when the dissolution of the monasteries had raised the question of poor relief. It was adopted for convenience, as the contributions were at first entirely voluntary; but as the problem of the poor increased in importance, compulsion was applied, and at the beginning of the seventeenth century, by the acts of Elizabeth of 1597 and 1601, compulsion was fully established and the parish adopted as the area for levying rates for the relief of its poor. It now became necessary to define more specifically the persons liable for this rate, but the law framed no system by which assessments were to be made or rates collected. A distinction was made between the occupier of certain properties (such as lands, houses, coal mines, or salable underwoods) and an inhabitant of the parish. The occupier was to be taxed upon the basis of the annual benefit arising from the property situated in the parish; but the inhabitant was taxed not in respect to any specified subjects, implying an intention to tax them upon some other



basis. This raised the question of "ability," and how that question was to be determined. The act said nothing that could point to personal property, "and it was only on the ground of his being an inhabitant that any owner of personal property could be rated for that property, because there was no word in that statute to include him, except the word inhabitant. Under that statute, therefore, there was necessarily a distinction between residents and non-residents, because the resident would be ratable for his personalty within the place, the non-resident not. The distinction, however, under that statute applied only to those kinds of property which the statute did not specify, for the occupier of lands, houses, etc., and whatever the statute enumerated, was ratable whether he were resident or not." \* And when the judge of assize was asked to give an opinion he decided that lands should be taxed equally and indifferently, but an additional tax could be laid on the "personal visible ability" of the parishioner. Further, "all things which are real, and a yearly revenue must be taxed to the poor." Yet there were limitations on this apparently wide interpretation, and as early as 1633 it was only visible properties, both real and personal, of the inhabitants within the parish, and only within the parish, that could be taxed. The property to be assessed must be local, visible, and productive; it must consist only of the surplus left after deducting debts; it must be rated according to the profit produced; and its nature must be distinctly specified. "Consequently, such subjects as wages, pensions, easements, profits derived from labour and talent, profits from money invested or lent elsewhere, and furniture, were exempt."

The absence of all attempts to tax or value property other than what was visible and tangible continued to the reign of Queen Anne, when a single decision of the court pointed to the taxation of the stock in trade of a tradesman, a decision that does not appear to have been acted upon. As late as 1775 Lord Mansfield said, "In general, I believe neither here nor in any other part of the kingdom is personal property taxed to the poor." At all events, it

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\* Abbott (Chief Justice) in *R. vs. The Hull Dock Company*, 3 B and C, p. 525.

could not be taxed unless usage could support it. Toward the end of the century, when taxation for the Napoleonic wars was touching more intimately the concerns of the people, the idea of subjecting personal property to the poor rate was favoured, but nearly half a century passed before it attracted attention. In their report for 1843 on local taxation the poor-law commissioners gave the following summary of the status of this question:

“The practice of rating stock in trade never prevailed in the greater part of England and Wales. It was, with comparatively few exceptions, confined to the old clothing districts of the south and west of England. It gained ground just as the stock of the wool staplers and clothiers increased, so as to make it an object with the farmers and other rate payers, who still constituted a majority in their parishes, to bring so considerable a property within the rate. They succeeded by degrees, and there followed upon their success a more improvident practice in giving relief than had ever prevailed before in England. . . . When the practice of rating stock in trade was fully established in this district, the ancient staple trade rapidly declined there and withdrew itself still more rapidly into the northern clothing districts, where no such burden was ever cast upon the trade.”

A final determination of the question was imposed upon Parliament by the pressure of the manufacturing and commercial classes arising from a decision in the case of *R. vs. Lumsdaine*, in 1839, looking to the taxation of personal property. In consequence, an act was passed (3 and 4 Vict., c. 89), and has remained in force until the present time, exempting an inhabitant from any tax “in respect of his ability derived from the profits of stock in trade or any other property, for or toward the relief of the poor.” Thus it is that the English local taxation has managed to keep clear from the bog of assessing personal property, and the annual value of immovable property, such as lands and houses, within the parish has come to be selected as the simplest and most practical basis for assessments. The history is of high importance, because the basis of the poor rate was adopted as the basis for all other rates levied in local taxation. Whatever confusion has been introduced has arisen from other causes, such as the consti-

tuting poor-law unions containing more than one parish, the levying of county rates, a county having a boundary other than a parish or a union, and the assessing for rates by parish officers who acted independently of each other. Many efforts have been made to introduce a uniform system of assessment, but without success. One of the clearest thinkers on this subject was Sir George Cornwall Lewis. In appearing before a committee on taxation, in 1850, he said: "We have never recognised the principle of having one valuation for all the different rates. If that principle were once admitted, the inducement to have an accurate and complete valuation would be at its maximum, because then you would know that whatever charge might be imposed it would be imposed upon that valuation, whereas if there is one assessment for one rate and another assessment for another rate, and an amended assessment for a third rate, no one cares much about making any assessment perfect. This is one defect of the present system of valuation."

The defect has persisted and become more aggravated each year. In 1870 a special commission came to the resolution that "the great variety of rates levied by different authorities, even in the same area, on different assessments, with different deductions and by different collectors, has produced great confusion and expense; and that in any change of the law as regards local taxation, uniformity and simplicity of assessment and collection, as well as of economy of management, ought to be secured as far as possible." When it is considered that for the five independent valuations for raising rates on property there are in England and Wales more than one thousand valuation authorities, the hopelessness of obtaining uniformity is apparent. With such a multiplicity of agents it is useless to look for good results. There is no fixed or necessary time for making the valuation lists; no uniform system of or scale for making deductions for arriving at the ratable values of certain classes of property; exemptions and allowances are said to be given unduly, through undue pressure on the assessing authorities; and the assessment committees have no statutory power to ascertain from owners or occupiers the rentals and other particulars needed to determine values. The reforms needed are a

geographical redistribution of taxing limits and uniform rules of assessments.

If so great confusion can occur where the property to be valued for taxation is visible and tangible property, and where the principles underlying the assessment are few and comparatively simple, what is to be expected when the attempt to reach invisible and intangible property is added?

Constitutional provisions have not secured equality of valuation, and the statute laws are powerless to make effective the sounding phrases of the Constitutions. "Property shall be assessed for taxes," says the Constitution of New Jersey, "under general laws and by uniform rules, according to true value." The Assembly sought to embody this principle or rule in the laws of the State. "All real and personal estate within this State, whether owned by individuals or corporations, shall be liable to taxation at the full and actual value thereof, on the day in each year when by law the assessment is to commence." \* Such assertions of the basis of taxation need no further explanation, for the intention of the framers of constitution and law is unmistakable—equal and uniform taxation, a common burden involving a common obligation to discharge it. The practice at once creates the necessity for recognising the inaptitude of the instruments called upon to carry the law into execution. More than four hundred separate assessors and boards of assessors determine the taxable values upon no uniform system and in defiance of law and Constitution. "In practice they value real estate all the way from twenty-five to seventy-five per cent of its true value, depending on its location, income, etc., and their personal or political prejudices, and value different contiguous areas at different valuations, though of equal values really; and as to personal property, I regret to say, they appear to make no earnest or honest effort to reach it anywhere, except in the agricultural districts, and even there very imperfectly." †

Enough has been said in these articles to show that this defect of method is not peculiar to one State, but is

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\* General Statutes of New Jersey, p. 3929, section 62.

† James F. Rusling, in the New Jersey report of 1897.

to be found in all. The remedies proposed or adopted have proved ineffectual to produce a better result. It is asserted that the more careful selection of the assessors, a higher salary for service, and a more strict accountability for their acts would introduce a reform; but this could, even under the most favourable of conditions, be only a partial reform. A State assessor with power to remove the assessors has been recommended, but this officer could not become so conversant with conditions throughout the State as to be able to decide on the many questions of assessments coming before him. Certain descriptions of property could be dealt with by such an officer and with an approach to fair and equal treatment. The valuation of the "main stem" of the New Jersey roads was made by civil engineers, and it is believed to have met the constitutional provision as to "true value." In the valuation of a vast quantity of other property no such expert knowledge could be applied, and especially is this true as to "personal property." Real estate might be approximately valued and a *cadaastre* or record prepared, but after twelve months the most carefully compiled valuation would be out of date. Before personal property the assessor would still stand powerless. No multiplication of officers or no system of control over the many local assessors can solve this question in a manner satisfactory to justice to both State and taxpayer.

It would seem, then, as if an abandonment of what has been regarded as almost essential features of the State tax systems alone offers relief. No such abandonment can be effected unless an adequate revenue from other sources be provided. The "general property tax," with its futile and laughable incompetency to reach the most profitable sources of revenue, should be modified, and even eliminated as far as is possible. The general principle underlying it, of taxing every form of property, was suited only to a time when the bulk of a man's estate consisted in visible and tangible objects—lands, houses, live stock, and furniture. With every creation of a credit instrument, with the immense development of corporations, the principle has become weaker, until it now stands confessedly inapplicable to at least four fifths of the personal property in existence, and this proportion grows larger each year.

The universal and admitted failure of the general property tax to attain good results and the great difficulty, indeed the impossibility, of reducing it to a form in which it can operate with efficiency and an approach to justice, must lead to its abolition and the gradual substitution of other and more simple taxes. However well adapted to a community in which the taxable property was in evidence and easily assessed for purposes of taxation, it becomes antiquated, unequal, and inquisitorial in a people where credit and credit investments have been highly developed, and where the greater social activities, whether in commerce or industry, transportation or production, are conducted by corporations issuing various kinds of securities, none of which can easily be reached by a taxing authority away from the centre of incorporation. To undertake to include these securities, evidences of debt, or obligations in a general property tax is to invite evasion, put a heavy inducement on concealment, and, whenever effective, to give rise to shocking inequalities of burden. The widow and orphan, whose property is in the hands of a trustee, pay the full tax; in any other direction the holder of stocks or bonds, money or notes, escapes according to the elasticity of his conscience. The very exemptions recognised by law give an opportunity for new evasions, based upon analogy or upon some technicality under which the business is conducted. Bonds of the United States, the legal-tender notes, or money are beyond the reach of State authorities for the purpose of taxation. In the same category come also all imported goods in original packages, in the possession of the importers, and all property in transit. These exemptions alone amount to thousands of millions of dollars, and the tendency has been to increase the number of items exempted. But every such exception under the law adds to the burdens of the honest taxpayer, and every evasion of taxation also renders his charge the greater. Here is not distributive justice, but concentrated injustice.

Another large proportion of the personal property owned by the citizens of the State is of the most intangible character, and in great part invisible and incorporeal, such, for instance, as negotiable instruments in the form of bills of exchange, State, municipal, and corporate bonds, and, if

actually situated in other States, exempt from taxation where they are held; acknowledgments of individual indebtedness, and a number of similar matters. All property of this character is, through a great variety of circumstances, constantly fluctuating in value; is offset by indebtedness which may never be the same one hour with another; is easy to transfer, and by simple delivery is, in fact, transferred continually from one locality to another, and from the protection and laws of one State to the sovereignty and jurisdiction of some other. It is not to be wondered, therefore, that all attempts to value and assess this description of property have proved exceedingly unsatisfactory, and that nearly every civilized community, with the exception of the States of the Federal Union, have long ago abandoned the project as something wholly inexpedient and impracticable.

The differences among the States in the interpretation of residence, of the *situs* of the property taxed, are also an objection to this system and an obstacle to its application. The want of uniformity can not be abolished by enactments of law, because absolute uniformity of laws would not insure as uniform interpretation of their provisions. The rules for assessment are uniform for the officers of a State, but the returns made involve such differences in the application of the rules, that one is forced to the conclusion that a misunderstanding of the spirit of the law exists, colouring differently the view of each returning officer. Discrimination against the county or municipality and discrimination against the individual are to be met at every turn. No wording of the law can eliminate this personal judgment of each assessing authority, and the supervision of the returns by State boards of equalization has introduced an even greater departure from justice, as a majority, based upon selfish interests, may be had, and its decision may readily be defended as based upon good and sufficient reasons. An appeal to the last resort, the higher courts, may produce redress against unjust assessments, but each case must be decided upon its merits, and only under very exceptional circumstances—as in the recent case at Tarrytown, New York, where striking and general, even personal, spite had been shown in the tax levy—can a number of taxpayers find it their interest



to combine and carry the question into the courts for adjudication.

Imperfect in theory, the machinery of the general property tax is imperfect. With at present fully two thirds of the personal property of the State exempted from taxation by law or by circumstances growing out of its condition, or the natural depravity and selfishness of the average taxpayer, and with a large part of the other third exempted by competing nations or neighbouring States, what becomes of the theory so generally accepted in the United States that in order to tax equitably it is necessary to tax everything? A very slight examination leads to the conclusion that it is the most imperfect system of taxation that ever existed; that, with the exception of moneyed corporations, it is a mere voluntary assessment, which may be diminished at any time by an offset of indebtedness which the law invites the taxpayers to increase *ad infinitum*, borrowing on pledge of corporate stocks, United States bonds, legal-tender notes, etc., all exempt from taxation; that its administration in respect to justice and equity is a farce and more uncertain and hazardous than the chances of the gaming table; and that its continuance is more provocative of immorality and more obstructive of material development than any one agency that can possibly be mentioned. A stringent enforcement only leads to greater perversions and a wider evasion. A lax enforcement does not reduce its inequalities and general want of application to actual conditions.\*

The problem, then, is what taxes to introduce in place of this confessed failure of the general property tax.

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\* The commissioners "have no confidence in any system of inquisition or system which requires assessors to be clairvoyants; to ascertain things impossible to be ascertained by the agencies provided in the law; to ascertain the indebtedness of the taxpayer; to ascertain or know who is the owner of property at a given time that can be and is transferred hourly from owner to owner by telegraph or lightning, and that may be transported into or out of the jurisdiction of the assessor with the rapidity of steam. or that requires assessors or taxpayers to make assessments on evidence not admissible in any court, civil or criminal, in any civilized country where witches are not tried and condemned by caprice or malice on village or neighbourhood gossip."



There can be little doubt that the desire for greater simplicity in taxation is generally felt, and in part put into practice. The mass of various kinds of imposts, added without any system or real connection or relation one to another, has often resulted in so large a number of charges on Government account as to defeat itself. The French taxes at the end of the last century, with their added fault of inequality and injustice in distribution, led naturally to the theory of a single tax—the *impôt unique* of the physiocrats—which did not become a fact, yet registered the protest against the multiplicity and crying oppressiveness of the remains of feudal dues and fiscal experiments undertaken under the stress of an empty treasury. So it has been noted at the present time that where an opportunity has offered there is a tendency in European countries to simplify their taxes, and, as in the case of Switzerland, prepare the way for income and property taxes. It is a greater dependence on such direct taxes in place of indirect taxes that has distinguished the great fiscal changes in recent years. Germany may have wished to establish a brandy monopoly, and Russia may resort to a monopoly of the manufacture and sale of distilled spirits. But England increases her death duties, France and the United States seek to frame acceptable taxes on income, and Switzerland succeeds in modifying her system in the line of direct taxes.

There is an earnest movement in favour of a single tax on the value of land, exclusive of other real property connected with it. As involving a question of abstract justice the proposition has much in its favour, but it can not be denied that practical obstacles oppose its adoption. The recent commission on taxation in Massachusetts thus treats of it: "It proposes virtually a radical change in the ownership of land, and therefore a revolution in the entire social body. In this form of taxation all revenue from land alone is to be appropriated—that is, the beneficial ownership of land is to cease. Whether or not this system, if it had been adopted at the outset and had since been maintained, would have been to the public advantage may be an open question, but it would certainly seem to be too late now to turn to it in the manner proposed. In any event, it involves properly not questions of taxation, but

questions as to the advantage or disadvantage of private property in land." \*

If securities are to be taxed, the methods adopted should avoid a double taxation, and an attempt to reach capital outside of the State. It is evident that a State, like Massachusetts, which taxes the foreign holder of shares in its corporations as well as the shares of foreign corporations held by its own citizens, is inviting a dangerous reprisal from other States. "Wherever the owner may be, if the corporation is chartered within the State the Commonwealth collects the tax on the shares. Wherever the corporation may be, if the owner is within the State the Commonwealth also collects the tax (in theory of law at least)." If this be the best possible system, and it is supposed Massachusetts assumes it to be, general double taxation would follow its adoption by the other States. The effort to carry this rule into practice proves its injustice as well as futility. The most searching and inquisitorial methods of seeking such property will not avail to reach a good part of it, and this results in adding inequality of burden to its other difficulties. Evasion is too simple a process to be unused, and the heavier the rate of tax the greater will be the resort to evasion and even to perjury, express or implied. The fundamental cause of the failure lies in this, "the endeavour to tax securities, which are no more than evidences of ownership or interest in property, and which offer the easiest means of concealment and evasion, by the same methods and at the same rate as tangible property situated on the spot."

This inherent difficulty can be cured only by abandoning the attempt to tax directly securities or evidences of debt, representing ownership or interest in property beyond the limits of the taxing authority. In the case of the securities of home companies they may be readily taxed at the source, but in the case of foreign corporations it is only by methods almost revolting in their injustice and treatment of the taxpayer that even a partial success can be secured. The dependence upon the sworn statement or declaration of the taxpayer is known to be extremely faulty and to offer a premium on untruthfulness.

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\* Report of the Massachusetts Commission, 1897, p. 74.

So long as this dependence is retained in whole or in part in a system for taxing personal property, the results must be unsatisfactory. The most judicious, even if it seems the most radical, remedy is to abandon the taxation of securities. Certainly it would be well to put an end to the Massachusetts plan of taxing securities representing property outside of the State, for that involves double taxation wherever it has been possible to impose the tax. What can be reached only by methods at all times trying and difficult, and sometimes very demoralizing, should not be permitted to remain a permanent feature of the revenue system of a State.

The New York commission of 1870 proposed to limit the State taxes to a very small number of objects. That they be "levied on a comparatively broad basis—like real estate—with certainty, proportionality, and uniformity on a few items of property, like the franchises of all moneyed corporations enjoying the same privileges within the State, and on fixed and unvarying signs of property, like rental values of buildings"—such was the scheme proposed. The leading object to be attained was equality of burdens, and a second object of quite as great importance was simplicity in assessment and collection. Granting that real estate, lands, and buildings were taxed on a full and fair market valuation, and that corporations contributed their share toward the expenses of the State, it remained to devise a tax that should reach all other forms of property that could be properly and easily assessed. This tax was to be known as the "building-occupancy" tax, and was to be levied on an additional assessment of a sum equal to three times the annual rent or rental value of all the buildings on the land.\* Nearly thirty years later the Massa-

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\* The New York commission of 1870 submitted two propositions on this point:

1. Tax the house or building as real estate separately, at the same rate of valuation as the land—that is, fifty per cent—and then assuming that the value of the house or building, irrespective of its contents, be such contents furniture, machinery, or any other chattels whatsoever, is the sign or index which the owner or occupier puts out of his personal property, tax the house or building on a valuation of fifty per cent additional to its real-estate valuation, as the representative value of such personal property; or, in other words, tax the land separately on fifty per cent of its fair market-

chusetts commission proposed a modified form of this tax. An annual rental value of four hundred dollars was to be exempt from taxation, but ten per cent was to be levied on all rental values in excess of that amount.

"The advantages of a tax on house rentals," said the commission, "can be easily stated. It is clear, almost impossible of evasion, easy of administration, well fitted to yield a revenue for local uses, and certain to yield such a revenue. It is clear, because the rental value of a house is comparatively easy to ascertain. The tax is based on a part of a man's affairs which he publishes to all the world. It requires no inquisition and no inquiry into private matters; it uses simply the evidence of a man's means which he already offers." \* If this tax were to be given it would be possible to wipe out all the tax on incomes from "profession, trade, or employment," to abolish the existing assessments on personal property. The effects would be far-reaching. If loans of money are free from taxation, the purchasing power of money in the same degree must diminish, which simply means that the purchasing power of farms and products of farms for money must to the same extent increase; hence, the borrower on bond and mortgage will not be subject to double taxation—first, in the form of increased rate of interest, and then in taxation of his real estate—and hence the farmer or landowner who is not in the habit of either lending or borrowing money will find his ability to meet additional taxation on his land increased in additional value of land and products of land in proportion as the tax is removed from money at interest. Also, the exemption of the products of farms and things

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able valuation, and tax the building apart from the land, as representing the owner's personal property, on a *full* valuation, as indicated by the rent actually paid for it or its estimated rental value. Or—

2. Tax buildings conjointly with land as real estate at a uniform valuation; and then as the equivalent for all taxation on personal property, tax the occupier, be he owner or tenant of any building or portion of any building used as a dwelling, or for any other purpose, on a valuation of three times the rental or rental value of the premises occupied. Tenement houses occupied by more than one family, or tenement houses having a rental value not in excess of a fixed sum, to be taxed to the owner as occupier.—*Report*, p. 107.

\* Massachusetts Report, p. 106.

consumed on farms from taxation will give a corresponding increased value to compensate for the "building-occupancy" tax. Tenants controlled by all-pervading natural laws can and will give increased rents, if their personal property is exempt primarily from taxation. The average profits of money at interest or of dealings in visible personal property free from taxation can not exceed, for any considerable length of time, the average profits of real estate, risk of investment and skill in management taken into consideration; and therefore the real pressure of taxation under the proposed system will finally be, like atmospheric pressure, or pressure of water, on all sides, and by a natural uniform law executed upon all property in every form used and consumed in the State. Persons must occupy buildings and business must be done in buildings, and through these visible instrumentalities capital can be reached by a rule of fractional uniformity, and by a simple, plain, and economical method of assessment and collection.

This building-occupancy tax, or tax on rental value, does not preclude a supplementary tax on corporations.

Much as has been said of the onerous burdens of taxation endured by individuals compared with those of corporations, and especially corporations enjoying certain rights or franchises in public streets and highways or corporations of a more or less public character. The phenomenal growth of municipalities has been one of the notable social movements of the last twenty-five years. The drift of population from the country districts to cities has increased with each year, and finds an explanation in many causes. The opportunities offered in a city for advancement are greater and more numerous; the monotony of farm life does not keep the young at home, but drives them for excitement and profit to the great centres of population. The economic changes of a half century also have their influence. The competition of new regions, better adapted for certain cultures on a commercial scale, has reduced the profitableness of older and more settled localities, where comparatively costly methods must be resorted to if the fertility of the land is to be maintained. The wheat fields of the West narrowed the margin of profit in New England farming, while the sheep

and cattle ranges of the West made it impossible for the same quality of live stock to be raised for profit in the East. Farms were abandoned, and the younger blood went West to grow up with the country, or into the cities to struggle for a living. Further, the advances in agriculture, the application of more productive methods, and the introduction of machinery have reduced the demand for labour in the rural districts, and this has led to a migration to the cities.

The result of this has been an immense development of city life, and with it an ever-increasing field for investment in corporate activities. The supply of water is usually in the city's control, but the manufacture and sale of gas, the production and distribution of electricity, the street railways, telegraph, and telephone interests are private corporations formed for profit and using more or less the public highways in the conduct of their various enterprises. A grant of a street or highway for a railway or electric-wire subway generally involves a monopoly of that use, and the privilege or franchise may become more valuable with the mere growth in the population of the cities. Assured against an immediate competition, there is a steady increment in the value of the franchise, and in the case of a true monopoly there seems to be no limits to its possible growth.

An instance of this nature is so striking in its relations and so pertinent to the present discussion that attention is asked to it. In the reign of James I water was supplied by two or three conduits in the principal streets of London, and the river and suburban springs were the sources of supply. Large buildings were furnished with water by tapping these conduits with leaden pipes, but other buildings and houses were supplied by "tankard bearers," who brought water daily. A jeweller of the city, Hugh Myddleton by name, believed something better could be done, and he proposed to bring water from Hertfordshire by a "new river." He embarked in the undertaking, sank his fortune in its conduct, and appealed to the king for assistance. James granted this aid, taking one half of the shares of the company—thirty-six out of the seventy-two shares into which it was divided. The shares that remained received the name of "adventurer's moiety."

The work was completed in 1613, and water was then let into the city.

So little was the measure appreciated that its first years were troublous ones for the shareholders. The squires objected to the river, believing it would overflow their lands or reduce them to swamps and destroy the roads. The city residents adopted the use of the water slowly. The shares were nominally worth £100 apiece, but for nearly twenty years the income was only 12s., or \$3, per share. In 1736 a share was valued at £115 10s., and by 1800 it had risen to £431 8s. With the first years of this century the company prospered, and its benefits were widely applied, reflecting this change in the value of its capital. In 1820 a share was worth £11,500 and in 1878 the fraction of a share was sold at a rate which made a full share worth £91,000. In 1878 the dividend distributed to each share was £2,610. Eleven years later, in July, 1889, a single share was sold for £122,800, or nearly \$600,000. The nominal capital of the company in 1884 was £3,369,000, and besides its water franchise it held large estates and valuable properties. While the actual real estate controlled by the corporation accounts for some of this remarkable rise in the value of the shares, a greater and more lasting cause was the possession of an almost exclusive privilege or franchise which assured a handsome and ever-increasing return on the investment. Had all the other property been deducted from the statement of the company's assets, there would have remained this intangible and unmeasurable right created and conceded by its charter and long usance.

A definition of a franchise has been given by the Supreme Court in terms of sufficient general accuracy to be adopted: "A franchise is a right, privilege, or power of public concern which ought not to be exercised by private individuals at their mere will and pleasure, but which should be reserved for public control and administration, either by the Government directly or by public agents acting under such conditions and regulations as the Government may impose in the public interest and for the public security." \* A necessary condition, then, is a public inter-

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\* *California vs. Southern Pacific Railroad*, 127 U. S., 40.



est in the occupation or privileges to be followed. The good will of a person or individual trader is not a franchise in this sense, though a franchise may be enjoyed by an individual as well as by a corporation, and good will may rest upon the privilege implied in the franchise.

The recognition of franchises, a species of property "as invisible and intangible as the soul in a man's body," as a proper object for taxation is now regarded by many as beyond any dispute. It is peculiarly appropriate as a source of revenue for the exclusive use of the State, inasmuch as the grant of franchises emanates from the State in its sovereign capacity. In the case of *Morgan vs. The State of Louisiana*, Justice Field, of the Supreme Court of the United States, said: "The franchises of a railroad corporation are rights or privileges which are essential to the operation of the corporation and without which its roads and works would be of little value, such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. They are positive rights or privileges, without the possession of which the road or company could not be successfully worked. Immunity from taxation is not one of them." \* Further, the extent to which this taxation of franchises may be carried rests entirely in the discretion of the taxing power, subject only to constitutional restrictions.

The great difficulty in applying such a tax lies in the methods of reaching an understanding on the value of the franchise. How can this indefinite something be made visible on the tax books? In many instances the franchise may be regarded as inseparable from the real property of the corporation. The rails of a tramway, the poles and wires of a telegraph company, the pipes and conduits of a gas company, are real and tangible things, necessary to a proper conduct of the respective functions of the corporations. But the right to lay tracks in the public streets, to sink pipes under the streets, or to string wires overhead is as necessary a possession and as essential to the performance of what the corporation was created to accomplish. Whether this permits the franchise to be regarded as "real

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\* 93 U. S. Reports, pp. 217, 224.



estate" and so offers it for taxation is a question of some theoretical interest, but of little practical importance.\* Unless the franchise is regarded in this way, as belonging to real estate, or as forming a taxable entity apart from other property, it would be simpler to reach it through a corporation tax in one of the many ways open for applying that tax.

Enough has been said to demonstrate the extremely faulty condition of tax methods in the United States.

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\* A recent law of New York is very full on this point:

"The terms 'land,' 'real estate,' and 'real property,' as used in this chapter, include the land itself above and under the water, all buildings and other articles and structures, substructures, and superstructures, erected upon, under, or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage, or dockage thereon; all bridges, all telegraph lines, wires, poles, and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above, and under ground; all surface, underground, or elevated railroads, including the value of all franchises, rights or permission to construct, maintain, or operate the same in, under, above, on, or through streets, highways, or public places; all railroad structures, substructures, and superstructures, tracks, and the iron thereon, branches, switches, and other fixtures permitted or authorized to be made, laid, or placed on, upon, above, or under any public or private road, street, or grounds; all mains, pipes, and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity, or any property, substance, or product capable of transportation or conveyance therein, or that is protected thereby, including the value of all franchises, rights, authority, or permission to construct, maintain, or operate in, under, above, upon, or through any streets, highways, or public places; any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic, or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries, and fossils in and under the same, except mines belonging to the State. A franchise, right, authority, or permission, specified in this subdivision, shall for the purposes of taxation be known as a 'special franchise.' A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association, or corporation, situated in, upon, under, or above any street, highway, public place, or public waters, in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise." The reason for classing franchises as real estate was that under the existing laws of New York a franchise could not be assessed as personal property, as the bonded debt could then be deducted, leaving little or nothing to be taxed.

Uniformity is highly desirable, but equality of burden is even more to be desired. The advances in this direction have been few, and accomplished only partially in a few States. The machinery for making assessments is only a part of the problem, as the intention of the law, the spirit of the act, is of even higher importance in securing justice and moderation. If these essays, incomplete as they must of necessity be, have led to a better comprehension of the chaotic condition existing now and of the difficulties to be overcome, their object will have been attained. The remedy may be left for time to effect.

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